

# Oregon Law Practice Management

Practice Management Tips for Oregon Lawyers

## Crowdfunding Your Law Practice

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Crowdfunding is the practice of funding a project or venture by raising monetary contributions from a large number of people, typically via the Internet.

The crowdfunding model is fueled by three types of actors: the project initiator who proposes the idea and/or project to be funded; individuals or groups who support the idea; and a moderating organization (the “platform”) that brings the parties together to launch the idea.

In 2013, the crowdfunding industry grew to be over \$5.1 billion worldwide.

Source: [Wikipedia](#).

### Crowdfunding for Lawyers

Potentially, lawyers could use crowdfunding at any time – to jumpstart a law practice, expand a law practice, or bridge the gap during a downturn in business.

As you might expect, [crowdfunding is most successful](#) when used to promote a cause or new product idea rather than a service. *But it could work for lawyers if donors find the practice area and marketing pitch appealing.*

### The Ethics of it All

Before we get too excited about this idea, we need to do a gut check. Simply put: is crowdfunding ethical?

A quick Internet search produces a list of posts and articles on the subject. Here are a few:

- [Crowdfunding: The Future Of Public-Interest Funding?](#)
- [Is financing your law practice through “crowdfunding” ethical?](#)
- [Dewey Really Want to Say That Crowdfunding Is Unethical Fee Splitting?](#)

The first result is by far the most interesting for Oregon lawyers. In [Crowdfunding: The Future Of Public-Interest Funding?](#) author Sam Wright reports a conversation with Oregon lawyer Kellie Ann Furr who is crowdfunding a “private-public interest environmental law firm” on [Indiegogo](#). Furr is halfway to her fundraising goal of \$7,500. Take the time to look at [her campaign](#) and you’ll understand the [appeal](#) and her [success](#).

*But back to the ethics of it all...*

In his [Above the Law](#) post about Furr, Wright tells us:

First, she sought and received an informal opinion from the Oregon State Bar on “the ethics of donation-based crowdfunding” to make sure she was on sound ethical footing. She was also careful to select “perks” for donors that would not affect her “professional independence” — in her case, the perks mostly involve volunteer time or pro bono assistance to environmental organizations. And she includes appropriate disclaimers on her campaign page.

So does this mean Oregon lawyers are off and running – free to set up crowdfunding campaigns without a second thought? Not quite....

### **Crowdfunding is a “Communication Concerning a Lawyer’s Services” for Purposes of Oregon RPC 7.1**

By necessity, crowdfunding involves representations about your potential or ongoing law practice. Therefore, Oregon RPC 7.1 – Communication Concerning a Lawyer’s Services – would apply to the content contained in your crowdfunding appeal:

“A lawyer shall not make a false or misleading communication about the lawyer or the lawyer’s services. A communication is false or misleading if it contains a material misrepresentation of fact or law, or omits a fact necessary to make the statement considered as a whole not materially misleading.”

Simply put: lawyers are responsible for ensuring that representations made about their practice are accurate. For an excellent discussion of this topic, see [OSB Formal Opinion No. 2007-180 Internet Advertising: Payment of Referral Fees](#) and the following articles:

- [What Hath the Web Wrought? Advertising in the Internet Age](#)
- [Internet Marketing: Rules of the Road](#)

## “Dishonesty, Fraud, Deceit, or Misrepresentation” – the Companion of RPC 7.1

A violation of Oregon RPC 7.1 (communication that is false or misleading) could also implicate Oregon RPC 8.4:

“It is professional misconduct for a lawyer to ... “engage in conduct involving dishonesty, fraud, deceit, or misrepresentation that reflects adversely on the lawyer’s fitness to practice law.”

But lawyers can run afoul of RPC 8.4 in other ways. As discussed below, crowdfunding campaigns often promise “rewards” or “perks” for donors. Assuming that offering something in return for a donation is ethical, failing to deliver the “reward” or “perk” if all conditions are met would likely be construed as a violation of 8.4.

### The Granddaddy of them all: Is Crowdfunding Fee Sharing with a Nonlawyer?

Lawyers and law firms are prohibited from sharing legal fees under Oregon RPC 5.4, except in limited circumstances. This begs the question: if a donor gives a lawyer money to fund his or her law practice, does this constitute impermissible fee sharing?

Maybe yes. Maybe no. Where is the “fee” and how is it “shared?” Compare the following scenarios:

1. Lawyer and nonlawyer wish to form an LLC offering business advice. They intend to charge potential clients a flat fee of \$1,000 for their services and split the fee 50/50. Lawyer will provide the legal advice; nonlawyer will coach clients on business strategies, financing, marketing, and the like.

While this arrangement raises a number of issues, the question here is: does the proposed fee split violate Oregon RPC 5.4? The answer is a straightforward: yes!

2. A donor gives money to a lawyer to start her law practice, no strings attached – the funds are a gift, not a loan; the donor is seeking nothing in return; the lawyer is providing nothing in exchange for the donation. There is no “fee.” There is no “sharing.” The donor could be Mom, Dad, a friend, or a stranger responding to a crowdfunding appeal. It is hard to understand how this could be a violation of RPC 5.4 – but as always, I encourage readers: [take your questions to the experts – OSB General Counsel’s Office.](#)

So crowdfunding looks like a “go,” right? Not so fast ... here’s the thing about crowdfunding. Donations aren’t generally a “gift” with no strings attached:

The Crowdfunding Centre’s May 2014 report identified the existence of two primary types of crowdfunding:

**Rewards** crowdfunding: entrepreneurs pre-sell a product or service to launch a business concept without incurring debt or sacrificing equity/shares.

**Equity** crowdfunding: the backer receives shares of a company, usually in its early stages, in exchange for the money pledged. The company’s success is determined by how successfully it can demonstrate its viability.

Source: [Wikipedia](#).

Permitting donors to take an [equity interest](#) in your law firm is clearly impermissible under RPC 5.4. A [rewards](#) approach could quickly go awry if the lawyer violated RPC 7.1, 8.4, or other applicable rules. Remember Kellie Ann Furr? Her [Indiegogo](#) campaign offers four different “perks” or rewards for donors: volunteer time, pro bono work, or a one-hour consultation. She carefully limits the one-hour consultation to Oregon residents only and includes a disclaimer that donating to her campaign does not create an attorney-client relationship. Is this sufficient? At the risk of repeating myself: [take this question to the experts – OSB General Counsel’s Office](#).

## Funding a Law Practice Is Only Part of the Picture: Student Loans, Litigation, and Securities Regulation

Crowdfunding raises issues in other areas as well. Check out these posts:

- [Upstart.com: Crowdfund Student Loan Debt, Commit Ethics Violation?](#)
- [New Websites Use Crowdfunding to Finance Lawsuits](#)
- [JustAccess Seeks Crowdfunding to Launch Venture to Crowdfund Legal Disputes](#)
- [Crowd Funding, Private Placements and other Options for Funding Plaintiffs’ Lawsuits under the JOBS Act of 2012](#)
- [Business Lawyering in the Crowdfunding Era](#)
- [Crowdfunding: The Real Thing Is Almost Here](#) (discussing securities regulation)

## Learn More

If you want to learn more about crowdfunding, read the following:

- [Answers to Five Common Questions about Starting a Crowdfunding Campaign](#) (targeted to nonprofits, but contains good tips)
- [Top Crowdfunding Websites for Your Project](#)
- [Crowdfunding Tools and Resources](#)
- [21 Examples of Crowdsourced Fund Raising Platforms](#)

Next, get ethics advice – from independent ethics counsel with whom you form an attorney-client relationship or [OSB General Counsel’s Office](#). The General Counsel’s Office can help you identify applicable rules, point out relevant formal ethics opinions and other resource material, and give you a reaction to your ethics question – they are always a good place to start.

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Postscript:

In addition to the above, practitioners should also consult with a tax lawyer or CPA. Money raised via crowdfunding will likely be considered [taxable income](#). Check out these guidelines, available from [PayPal](#). A word of caution: as noted [here](#), failure to meet [PayPal’s](#) threshold for purposes of generating a 1099 doesn’t mean *you* aren’t obligated to report the income.

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