

David J. Elkanich

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Areas of Practice & Industry Specialties

Litigation; Privacy & Data Security Law; Professional Responsibility



David J. Elkanich is a Shareholder in Buchalter's Portland office, a member of the Firm's Litigation Practice Group, and Chair of the Firm's new Professional Responsibility Group.

Mr. Elkanich focuses his practice primarily on legal ethics, risk management, and discipline defense. He advises lawyers, law firms, in-house legal departments, as well as students and other professionals, on a variety of ethics issues, including conflicts of interest, confidentiality, fee disputes, internal investigations, law firm dissolutions and partnership disputes, malpractice and professional liability cases, and litigation issues, such as withdrawal and disqualification motions.

In addition, Mr. Elkanich represents lawyers, students and other professionals in front of regulatory authorities and bar associations on licensing, admissions, reciprocity, character and fitness, consumer protection, unauthorized practice of law, and disciplinary matters.

Mr. Elkanich frequently counsels lawyers and law firms regarding how they can innovate through legal technology and the creation of new policies and firm structures to address client needs and the changing legal landscape. In particular, Mr. Elkanich is interested in how lawyers navigate an "electronic" practice, including cloud computing, mining metadata, using social media, data privacy and security issues particular to lawyers.

Among his substantial body of representative experience, Mr. Elkanich briefed and argued the following recent precedent-setting state court cases involving lawyer ethics and professional responsibility:

- *In re Conduct of Harris*, 366 Or. 475, 466 P.3d 22 (2020): holding that attorney did not violate rules against unauthorized practice of law when he acted as in-house counsel in Oregon pending his reciprocal admission to the bar because he was engaged in the provision of legal services on a temporary basis (even though he had accepted permanent employment in Oregon). See Oregon RPC 5.5(a), (c).
- *Matter of Admission of Halttunen*, 367 Or. 360, 478 P.3d 488 (2020): holding that applicant's conduct did not categorically bar applicant from admission to state bar and that applicant met his burden of showing he had sufficiently reformed his character to warrant admission to the bar.
- *In re Conduct of Conry*, 368 Or 349, — P.3d — (2021): in a matter of first impression, the Court set out a framework analyzing when a lawyer may respond to negative social media posts, holding that a lawyer may do so under RPC 1.6(b)(4) as long as the response is within reason and to the extent that the lawyer believes is reasonably necessary.

Mr. Elkanich also represents businesses and individual professionals and executives in a wide variety of commercial litigation, including consumer protection, professional liability and partnership disputes.

Mr. Elkanich was the chair of the Anti-Bias Rule Drafting Committee in Oregon, which drafted an anti-bias ethics rule that was ultimately adopted as RPC 8.4(a)(7), making it professional misconduct for a lawyer to, "in the course of representing a client, knowingly intimidate or harass a person because of that person's

race, color, national origin, religion, age, sex, gender identity, gender expression, sexual orientation, marital status or disability.” He also spent three terms on the Oregon Legal Ethics Committee and is also an adjunct professor at Lewis & Clark Law School, where he has taught ethics since 2012.

Mr. Elkanich has been named as one of *The Best Lawyers in America*, Ethics and Professional Responsibility Law from 2016-2023, and was selected as the Ethics and Professional Responsibility Law Lawyer of the Year in 2021. He was featured in *Oregon Super Lawyers* magazine from 2017-2022, and as a “Rising Star” in 2012 and 2013.

Publications

- Step One: Know Your Client, *Oregon Business Lawyer, Oregon State Bar Business Law Section Newsletter*, March 21, 2021
- Oregon Supreme Court Provides Common Sense Guidance for Lawyers Moving from One State to Another, *Holland & Knight Alert*, June 3, 2020
- Ethical Issues Arising in Fee Agreements, *Fee Agreement Compendium*, April 12, 2018
- Mirror, Mirror, on the Wall, is this Privileged After All? Examining the Ability to Shield Communications with Experts and Consultants Through the Attorney-Client Privilege and the Work-Product Doctrine, *Rocky Mountain Mineral Law Foundation*, July 12, 2017
- Marketing, Advertising and Solicitation, *The Ethical Oregon Lawyer*, February 1, 2015
- Withdrawal from Employment, *The Ethical Oregon Lawyer*, January 1, 2015
- Considering Bias in Our Profession: A New Rule, A New Outlook, *Oregon State Bar Bulletin*, October 12, 2014
- The Risk Management Challenges of Record Retention and Destruction – Developing Records Management Policies that Protect Both Law Firms and their Clients, *Professional Lawyer*, February 12, 2008
- Billing Costs and Limited Representation Fee Agreement, *Fee Agreement Compendium*, April 1, 2007
- Suspended Animation: A Lawyer’s Life as a Legal Assistant, *Oregon State Bar Bulletin*, January 12, 2006
- Rock the RPCs, Parts I and II, *Oregon State Bar Bulletin*, December 1, 2004
- All Clients are Not Created Equal or 'The Client Who Looks Too Good to Be True', *The MPC Risk Manager, Vol. 1, No.3*, October 1, 2004
- Beyond the Black Letter: The Art and Science of Risk Management, *Oregon State Bar Bulletin*, April 12, 2004
- Attorney-Client Privilege Issues, *The MPC Risk Manager, Vol. 1, No.2*, April 1, 2004

Presentations

- Presenter, "Ethics: Fees, Liens, Withdrawing, Conflicts, Receiving Illegally Obtained Evidence," Domestic Relations Attorneys of Washington Annual Conference, October 7, 2022
- Co-Presenter, "Ethics for Bankruptcy Practitioners," The Oregon State Bar Debtor-Creditor Section Annual CLE, September 30, 2022
- Co-Chair, "24th Annual Ethics, Professionalism, and Civility Workshop," The Washington State Bar Association, September 8, 2022
- Speaker, "Lawyers are Not Punching Bags: Construing the Rules Reasonably and in Defense of Lawyers.," Association of Professional Responsibility Lawyers’ Annual Conference, August 6, 2022
- Speaker, "Ethics: Ethics of Mining Social Media and Jurors," Washington Defense Trial Lawyers’ Annual Meeting & Convention, July 22, 2022
- Co-Presenter, "Balancing Effective Representation with a Crushing Workload," Oregon Criminal Defense Lawyers Association’s Annual Conference, June 25, 2022

- Speaker, "Breaking the Cycle: The Ethics of Becoming a More Sustainable Lawyer," Oregon State Bar Sustainable Future Section, April 22, 2022
- Speaker, "A Day in the Life of an Ethical Tax Lawyer," Oregon State Bar Taxation Section Portland Luncheon CLE Series, March 16, 2022
- Speaker, "Ethics Horror Stories: How to Avoid Being THAT Lawyer," The Seminar Group, 20th Annual CLE Bootcamp, Hot Topics in the Law, December 8, 2021
- Speaker, "David Elkanich, Speaker at OCDLA's 2021, "Reborn from the Ashes"," December 3, 2021
- Speaker, "David Elkanich, Speaker for MBA," December 2, 2021
- Presenter, ""Ethical Risks of Attorney Social Media Activity: Navigating the Dangers of LinkedIn, Twitter, Facebook, Blogs"," Strafford Webinars, October 6, 2021
- Co-Moderator, ""23rd Annual Ethics, Professionalism, and Civility Workshop", Washington State Bar Association (WSBA)," WSBA, September 22, 2021
- Speaker, ""Ethics Traps in Family Law and New Disciplinary Rules," Domestic Relations Attorneys of Washington (DRAW)," DRAW, September 17, 2021
- Presenter, "Ethics Horror Stories: How to Avoid Being that Lawyer & Ethical Obligations When Working Remotely," Washington Defense Trial Lawyers, September 8, 2021
- Speaker, "Modern Ethics: Changing Technology and the Practice of Law," Alaska Bar Association Webinar , July 21, 2021
- Co-Speaker, "Feeling Insecure? Understanding Legal Ethics Issues for Securities," 41st Annual NW Securities Institute, May 14, 2021
- Co-Speaker, "Trending Ethics Questions for the Family Law Practitioner: A Practical Review of Current Issues," American Academy of Matrimonial Lawyers (AAML), April 16, 2021
- Speaker, "Bar Admission Standards Are Anything But Healthy," Association of Professional Responsibility Lawyers, March 6, 2021
- Speaker, "Ethical Horror Stories in the Practice of Law (And What You Can Learn from Them...)," William V. Deatherage Inns of Court, February 11, 2021
- Speaker, "The Ethics of Remote Working/Litigation," Oregon State Bar Debtor-Creditor Section's 2020 Virtual CLE and Annual Meeting, October 23, 2020
- Presenter, "Two-Part Presentation," 21st Annual Ethics, Professionalism, and Civility Workshop., September 14, 2020
- Speaker, "Planning Through the Pandemic: Practical and Ethical Issues During Times of Crisis and the COVID-19 Era," Oregon Criminal Defense Lawyers Association, August 7, 2020
- Speaker, "Ethics Roundup: Current and Emerging Topics with Technology," Oregon State Bar Real Estate Land Use Section, August 6, 2020
- Speaker, "Can I Take My Client's Phone? Ethical Concerns in Processing Client Evidence," Oregon Criminal Defense Lawyers Association (OCDLA) Annual Conference, May 20, 2020
- Speaker, "Planning Through the Pandemic: Practical and Ethical Issues During Times of Crisis and the COVID-19 Era," The Willamette Valley American Inn of Court, April 16, 2020
- Speaker, "Ethical Considerations: Keeping Your Ticket In The Age Of Social Media," The Seminar Group's 18th Annual CLE Bootcamp: Hot Topics in the Law, December 3, 2019
- Speaker, "David Elkanich, Speaker at Firm General Counsel Summit," Firm General Counsel Summit, September 25, 2019
- Speaker, "21st Annual Ethics, Professionalism and Civility Workshop," Washington State Bar Association, September 17, 2019
- Speaker, "2019 Ethical Reception," Holland & Knight Program, May 22, 2019

- Speaker, "Firm General Counsel Summit," Holland & Knight Program, October 31, 2018
- Speaker, "2018 Ethical Reception," Holland & Knight Program, May 24, 2018
- Presenter, "Firm General Counsel Summit," Holland & Knight Program, October 11, 2017
- Speaker, "2017 Ethical Reception," Holland & Knight Program, May 24, 2017
- Speaker, "Firm General Counsel Summit," Holland & Knight Program, November 2, 2016
- Speaker, "Where's Your Data: Data Privacy, Breach and Response for Law Firms," Oregon Law Institute, October 30, 2015
- Speaker, "Special Ethical Issues for Attorneys Working with the Cannabis Industry," Law Seminars International Cannabis and Intellectual Property, June 12, 2015
- Speaker, "Holland & Knight 2015 Ethical Reception," Holland & Knight Program, June 4, 2015
- Speaker, "Common Ethical Pitfalls of Using the Cloud, Mobile Devices and Social Media in the Practice of Law," PLI TechLaw Institute, May 14, 2015
- Speaker, "Ethics — Social Media/Cyber Security /MNPI Update on Ethics," American College of Investment Counsel Spring Investment Forum, April 30, 2015
- Speaker, "Be Social and Be Ethical – How Lawyers BE can Effectively Engage in Social Media; Cloudy with a Chance of Ethics – BE Making Educated Decision," ABA TechShow Conference and Expo, April 16, 2015
- Speaker, "Socially Acceptable Behavior? Using, Obtaining, and Deleting (!) Social Media for Litigators," Holland & Knight Program, March 31, 2015
- Speaker, "Ethics Issues for the Non Profit Organizations Lawyer," Oregon State Bar Nonprofit Organizations Law Section CLE Program, September 26, 2014
- Speaker, "The Illusion of Control: Considering Email Risks In An Electronic Environment, National Legal Aid and Defender Association," National Legal Aid and Defender Association, Student Legal Services Section Conference, July 17, 2014
- Speaker, "Caught With Your Head in the Cloud? Managing Risk and Navigating Ethical Issues in eDiscover," Holland & Knight Program, June 5, 2014
- Speaker, "The Year's Hottest Legal Ethics Issues," Holland & Knight Program, May 15, 2014
- Speaker, "Happy Ha-lawyer-een: Spooky Tales of Ethical Misconduct," West LegalEdcenter, November 1, 2013
- Speaker, "15th Annual Ethics, Professionalism and Civility Workshop," Washington State Bar Association, September 1, 2013
- Speaker, "From Metadata to Social Media — Ethics in the Digital Age," Oregon State Bar Real Estate/Land Use Section Annual Summer Conference, August 1, 2013
- Speaker, "Managing (and Mining) Metadata: Common Ethical Considerations for the Business Lawyer," Oregon State Bar, July 1, 2013
- Speaker, "Social Media Minefield: Investigation, Spoliation and Recrimination," West LegalEdcenter, June 1, 2013
- Speaker, "Maintaining Your Firm's Online Reputation — Ethical and Liability Issues in the Internet Age," Legal Malpractice and Risk Management Conference, March 1, 2013
- Speaker, "Surfing the Electronic Wave: Recognizing and Managing Online Ethics Issues," Oregon State Bar, December 1, 2012
- Speaker, "Hanging a Shingle? The Dos, Don'ts and Red Flags of Building a Law Practice," West LegalEdcenter, October 1, 2012
- Speaker, "14th Annual Ethics, Professionalism and Civility Workshop," Washington State Bar Association, September 1, 2012

- Co-Presenter, "Ethical Considerations for Motion Practice," Oregon State Bar, November 1, 2011
- Speaker, "13th Annual Ethics, Professionalism and Civility Workshop, ," Washington State Bar Association, September 1, 2011
- Speaker, "2011 Annual Employment Law Update," Oregon Lawyers Institute CLE, June 11, 2011
- Speaker, "Social Networking: Managing Communication in a Digital Age," Lewis & Clark Law School, April 1, 2011
- Speaker, "Professionalism and Ethics," Multnomah Bar Association, Young Litigators Forum Seminar Series, March 1, 2011
- Speaker, "The Hard Questions," 12th Annual Ethics, Professionalism and Civility Seminar, Washington State Bar CLE, September 1, 2010
- Speaker, "Seventh Annual Law of Lawyering CLE," Washington State Bar Association, November 1, 2009
- Speaker, "Ethics and Public Records Act Disclosure: High-Tech and Electronic Issues," Washington, September 1, 2009
- Speaker, "Ethical Risk Reduction: 10 Ways to Reduce Your Chances of Being Sued or Disciplined," West LegalEdcenter, July 1, 2009

Education

Mr. Elkanich earned his J.D. from the University of Oregon School of Law, and earned his B.A., *magna cum laude*, from University of Arizona.

Bar Admissions

- Oregon
- Idaho
- Washington

Court Admissions

- U.S. Court of Appeals for the Ninth Circuit
- U.S. District Court for the District of Oregon
- U.S. District Court for the Western District of Washington
- U.S. District Court for the Eastern District of Washington
- U.S. District Court for the District of Idaho

Community

- Oregon State Bar New Lawyer Mentoring Program
- Association of Professional Responsibility Lawyers (APRL)
- American Bar Association, Center for Professional Responsibility; Law Practice Division; Legal Education and Admissions to the Bar
- Multnomah Bar Association
- Oregon State Board of Bar Examiners Fitness Task Force, former Member
- Uniform (Civil) Jury Instructions Committee, Oregon State Bar, 2005-2007
- Oregon State Bar Discipline System Review Committee, former Member
- Legal Ethics Committee, Oregon State Bar, former Member and Chairperson