

FORMAL OPINION NO. 2005-2

Information About Legal Services: Cross-Referrals, Office Sharing with Nonlawyer

Facts:

Lawyer *A* proposes to enter into an agreement with Trust Company pursuant to which Lawyer *A* will endeavor to send Lawyer *A*'s clients to Trust Company when they need services of the type provided by Trust Company, in exchange for an agreement by Trust Company to recommend the use of Lawyer *A*'s services to its customers and to employ Lawyer *A* whenever practicable.

Lawyer *B* proposes to share office space with a CPA, but they propose no sharing or cross-referrals of clients, and they propose to keep their practices separate and independent.

Questions:

1. Is Lawyer *A*'s arrangement ethical?
2. Is Lawyer *B*'s arrangement ethical?

Conclusions:

1. No.
2. Yes.

Discussion:

Oregon RPC 7.2 provides in part:

(a) . . . A lawyer shall not otherwise compensate or give anything of value to a person or organization to promote, recommend or secure employment by a client, or as a reward for having made a recommendation resulting in employment by a client, except as permitted by paragraph (c) or Rule 1.17.

(b) A lawyer shall not request or knowingly permit a person or organization to promote, recommend or secure employment by a client through any means that involves false or misleading communications about the lawyer or the lawyer's firm. If a lawyer learns that employment by a client has resulted from false or misleading communications about the lawyer or the lawyer's firm, the lawyer shall so inform the client.

(c) A lawyer or law firm may be recommended, employed or paid by, or cooperate with, a prepaid legal services plan, lawyer referral service, legal service organization or other similar plan, service or organization so long as:

(1) the operation of such plan, service or organization does not result in the lawyer or the lawyer's firm violating Rule 5.4, Rule 5.5, ORS 9.160, or ORS 9.500 through 9.520; and

(2) the recipient of legal services, and not the plan, service or organization, is recognized as the client; and

(3) no condition or restriction on the exercise of any participating lawyer's professional judgment on behalf of a client is imposed by the plan, service or organization; and

(4) such plan, service or organization does not make communications that would violate Rule 7.3 if engaged in by the lawyer.

Oregon RPC 5.4(e) provides:

A lawyer shall not refer a client to a nonlawyer with the understanding that the lawyer will receive a fee, commission or anything of value in exchange for the referral, but a lawyer may accept gifts in the ordinary course of social or business hospitality.

Several other sections are also potentially applicable. Oregon RPC 8.4(a)(1) makes it professional misconduct for a lawyer to "violate the Rules of Professional Conduct, knowingly assist or induce another to do so, or do so through the acts of another." In other words, a lawyer cannot do indirectly what the lawyer cannot do directly.

That rule must be read in concert with Oregon RPC 7.3:

(a) A lawyer shall not by in-person, live telephone or real-time electronic contact solicit professional employment from a prospective client when a significant motive for the lawyer's doing so is the lawyer's pecuniary gain, unless the person contacted:

(1) is a lawyer; or

(2) has a family, close personal, or prior professional relationship with the lawyer.

(b) A lawyer shall not solicit professional employment from a prospective client by written, recorded or electronic communication or by in-person, telephone or real-time electronic contact even when not otherwise prohibited by paragraph (a), if:

(1) the lawyer knows or reasonably should know that the physical, emotional or mental state of the prospective client is such that the person could not exercise reasonable judgment in employing a lawyer;

(2) the prospective client has made known to the lawyer a desire not to be solicited by the lawyer; or

(3) the solicitation involves coercion, duress or harassment.

. . . .

(d) Notwithstanding the prohibitions in paragraph (a), a lawyer may participate with a prepaid or group legal service plan operated by an organization not owned or directed by the lawyer that uses in-person or telephone contact to solicit memberships or subscriptions for the plan from persons who are not known to need legal services in a particular matter covered by the plan.

Accord Oregon RPC 7.1(d) (“A lawyer may pay others for disseminating or assisting in the dissemination of communications about the lawyer or the lawyer’s firm only to the extent permitted by Rule 7.2.”).

The quid pro quo nature of Lawyer A’s above-described arrangement would clearly violate these provisions. On the other hand, a mere office-sharing arrangement as proposed by Lawyer B would not.

Approved by Board of Governors, August 2005.

COMMENT: For additional information on this general topic and other related subjects, see THE ETHICAL OREGON LAWYER §§2.15, 2.27–2.28 (Oregon CLE 2003); RESTATEMENT (THIRD) OF THE LAW GOVERNING LAWYERS §10 (2003); and ABA Model Rule 5.4. *See also* Washington Formal Ethics Op No 30 (reaching same conclusion regarding sharing office space with nonlawyer).