

FORMAL OPINION NO 2005-138

Prospective Clients: Legal Aid Service Referrals to Private Lawyers

Facts:

Legal Aid Service provides free legal services to persons who qualify under federal poverty guidelines and Legal Services Corporation regulations. Legal Aid Service also administers Referral Service, which consists of a referral coordinator employed by Legal Aid Service and a panel of private lawyers who work pro bono to represent persons who qualify financially for services but cannot receive them from Legal Aid Service because (1) the persons do not meet Legal Aid Service's priorities, or (2) the persons are adverse to a party to the same dispute who has been found to be qualified and who is receiving services from Legal Aid Service.

Legal assistants employed by Legal Aid Service screen the prospective clients for financial and other eligibility.¹ When a referral is made, Referral Service shares a general description of the legal matter and some identifying information with the pro bono lawyer. Referral Service receives brief periodic and final status reports from the pro bono lawyer. When the matter is concluded, Referral Service sends a letter to the referred client, which may result in the referred client commenting on whether the representation has been satisfactorily concluded.

A pro bono lawyer may choose to meet with clients in a room made available by Referral Service, but does not have access to Legal Aid Service's files.

¹ This opinion is limited to its specific facts. Legal Aid and similar programs may differ in ways that are material to the conclusions reached in this opinion. Careful attention should be paid to the framework of a particular program in applying this opinion.

Questions:

1. Is there a conflict of interest if Legal Aid Service, through its Referral Service, refers a potential client to a pro bono lawyer who is on the panel?

2. May Legal Aid Service make such a referral if the adverse party to the dispute has already been referred to a pro bono lawyer who is a member of the panel?

Conclusions:

1. See discussion.
2. Yes.

Discussion:

Oregon RPC 1.18 provides:

(a) A person who consults with a lawyer about the possibility of forming a client-lawyer relationship with respect to a matter is a prospective client.

(b) Even when no client-lawyer relationship ensues, a lawyer who has learned information from a prospective client shall not use or reveal that information, except as Rule 1.9 would permit with respect to information of a former client.

(c) A lawyer subject to paragraph (b) shall not represent a client with interests materially adverse to those of a prospective client in the same or a substantially related matter if the lawyer received information from the prospective client that could be significantly harmful to that person in the matter, except as provided in paragraph (d). If a lawyer is disqualified from representation under this paragraph, no lawyer in a firm with which that lawyer is associated may knowingly undertake or continue representation in such a matter, except as provided in paragraph (d).

(d) When the lawyer has received disqualifying information as defined in paragraph (c), representation is permissible if:

(1) both the affected client and the prospective client have given informed consent, confirmed in writing, or:

(2) the lawyer who received the information took reasonable measures to avoid exposure to more disqualifying information than was reasonably necessary to determine whether to represent the prospective client; and

(i) the disqualified lawyer is timely screened from any participation in the matter; and

(ii) written notice is promptly given to the prospective client.

The communications between prospective clients and the Legal Aid Service screener are subject to protection under Oregon RPC 1.18(b) as well as under Oregon RPC 1.6(a):²

(a) A lawyer shall not reveal information relating to the representation of a client unless the client gives informed consent, the disclosure is impliedly authorized in order to carry out the representation or the disclosure is permitted by paragraph (b).

Pursuant to Oregon RPC 1.18(d), the entire Legal Aid Service “firm” would not be disqualified by the fact that one of the lawyers took information from a prospective client in a screening call, as long as appropriate measures are taken to prevent access to the information by other lawyers in the firm. By the same analysis, Legal Aid lawyers are not disqualified because a legal assistant gathers information from prospective clients if the information is not available to the lawyer in the firm. It follows that a pro bono lawyer on the referral panel also would not be disqualified if the information gained in the screening call is not available to the pro bono lawyer.

Florida Ethics Opinion No 92-1 suggests that persons being screened by a similar Legal Aid Service should sign a consent “acknowledging that certain limited information given in the intake interview will not be treated as confidential for purposes of enabling the

² The exceptions in Oregon RPC 1.6 do not apply here. See also OEC 503(1)(a), which defines *client* for purposes of the lawyer-client privilege to include “a person . . . who consults a lawyer with a view to obtaining professional legal services from the lawyer.”

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Society to screen for conflicts or to make referrals.” Such consents may be helpful, although not required, in light of Oregon RPC 1.18.

Approved by Board of Governors, August 2005.

COMMENT: For additional information on this general topic and other related subjects, see *The Ethical Oregon Lawyer* § 5.2 (determining whether a lawyer-client relationship exists) (OSB Legal Pubs 2015); *Restatement (Third) of the Law Governing Lawyers* §§ 14–15, 60, 62 (2000) (supplemented periodically); and ABA Model RPC 1.18.