

FORMAL OPINION NO 2005-2

[REVISED 2021]

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:

(b) A lawyer shall not give anything of value to a person for recommending the lawyer's services except that a lawyer may

(1) pay the reasonable costs of advertisements or communications permitted by this Rule;

(2) pay the usual charges of a legal service plan or a lawyer referral service;

(3) pay for a law practice in accordance with Rule 1.17; and

(4) give nominal gifts as an expression of appreciation that are neither intended nor reasonably expected to be a form of compensation for recommending a lawyer's services.

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 lawyer shall not solicit professional employment by any means when:

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

(b) the person who is the subject of the solicitation has made known to the lawyer a desire not to be solicited by the lawyer; or

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

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, February 2021.

COMMENT: For additional information on this general topic and other related subjects, see *The Ethical Oregon Lawyer* § 2.4-4 (marketing, public relations, and public education programs), § 2.6-4 to § 2.6-5 (third-party employment recommendations and lawyer-referral services) (OSB Legal Pubs 2015); *Restatement (Third) of the Law Governing Lawyers* § 10 (2000); and ABA Model RPC 5.4.