

FORMAL OPINION NO 2005-23

[REVISED 2014]

Information Relating to the Representation of a Client: Retired and Former Lawyer

Facts:

Lawyer, who has retired, would like to give some files to an educational institution for historical purposes. The files to be given contain confidential information that Lawyer has obtained from clients over the years.

After Lawyer has retired, the new lawyer for one of Lawyer's former clients approaches Lawyer and asks for information about the prior representation.

Questions:

1. May Lawyer give the files to the educational institution?
2. May Lawyer convey client confidences or secrets to the new lawyer?

Conclusions:

1. No, qualified.
2. No, qualified.

Discussion:

These questions are governed by Oregon RPC 1.6, which provides, in pertinent part:

- (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).

(b) A lawyer may reveal information relating to the representation of a client to the extent the lawyer reasonably believes necessary:

(1) to disclose the intention of the lawyer's client to commit a crime and the information necessary to prevent the crime;

(2) to prevent reasonably certain death or substantial bodily harm;

(3) to secure legal advice about the lawyer's compliance with these Rules;

(4) to establish a claim or defense on behalf of the lawyer in a controversy between the lawyer and the client, to establish a defense to a criminal charge or civil claim against the lawyer based upon conduct in which the client was involved, or to respond to allegations in any proceeding concerning the lawyer's representation of the client;

(5) to comply with other law, court order, or as permitted by these Rules; or

(6) in connection with the sale of a law practice under Rule 1.17 or to detect and resolve conflicts of interest arising from the lawyer's change of employment or from changes in the composition or ownership of a firm. . . .

(7) to comply with the terms of a diversion agreement, probation, conditional reinstatement or conditional admission pursuant to BR 2.10, BR 6.2, BR 8.7 or Rule for Admission Rule 6.15. . . .

(c) A lawyer shall make reasonable efforts to prevent the inadvertent or unauthorized disclosure of, or unauthorized access to, information relating to the representation of a client.

See ORS 9.460(3), which requires a lawyer to “[m]aintain the confidences and secrets of the attorney’s clients consistent with the rules of professional conduct.”¹

¹ Former DR 4-101 also used the phrase *confidences and secrets* to describe the information that a lawyer is ethically required to protect. The definition of *information relating to the representation of a client* in Oregon RPC 1.0(f) encompasses the definitions of *confidences* and *secrets* in former DR 4-101.

Absent informed consent from the affected clients or some other applicable exception, it would be improper for Lawyer either to turn over files to an educational institution or to inform a new lawyer for the same client about any prior confidences or secrets.

Approved by Board of Governors, April 2014.

COMMENT: For additional information on this general topic and related subjects, see *The Ethical Oregon Lawyer* chapter 6 (confidentiality of information relating to representation) (OSB Legal Pubs 2015); OEC 503 (general lawyer-client privilege); Laird C. Kirkpatrick, *Oregon Evidence* §§ 503.01 *et seq.* (6th ed 2008) (supplemented periodically); *Restatement (Third) of the Law Governing Lawyers* ch 5 (2000) (supplemented periodically); and ABA Model RPC 1.6.

