

FORMAL OPINION NO 2005-37
Conflicts of Interest, Current Clients:
Issuers and Underwriters of Bonds

Facts:

Lawyer has an extensive municipal bond practice.

Question:

If Lawyer is counsel for an issuer with respect to a particular bond issue, may Lawyer also be counsel for the underwriter with respect to that bond issue?

Conclusion:

No.

Discussion:

Simultaneous representation of the issuer and underwriter in the same transaction would constitute a current-client conflict of interest within the meaning of Oregon RPC 1.7, which provides:

(a) Except as provided in paragraph (b), a lawyer shall not represent a client if the representation involves a current conflict of interest. A current conflict of interest exists if:

(1) the representation of one client will be directly adverse to another client;

(2) there is a significant risk that the representation of one or more clients will be materially limited by the lawyer's responsibilities to another client, a former client or a third person or by a personal interest of the lawyer; or

(3) the lawyer is related to another lawyer, as parent, child, sibling, spouse or domestic partner, in a matter adverse to a person whom the lawyer knows is represented by the other lawyer in the same matter.

(b) Notwithstanding the existence of a current conflict of interest under paragraph (a), a lawyer may represent a client if:

- (1) the lawyer reasonably believes that the lawyer will be able to provide competent and diligent representation to each affected client;
- (2) the representation is not prohibited by law;
- (3) the representation does not obligate the lawyer to contend for something on behalf of one client that the lawyer has a duty to oppose on behalf of another client; and
- (4) each affected client gives informed consent, confirmed in writing.

Simultaneous representation of the issuer and the underwriter would obligate Lawyer to contend for something on behalf of one client that Lawyer has a duty to oppose for the other client. *See* OSB Formal Ethics Op No 2005-28; OSB Formal Ethics Op No 2005-27.¹

Approved by Board of Governors, August 2005.

¹ This opinion does not address the circumstances in which a lawyer may be deemed to represent clients whom the lawyer has not expressly and affirmatively undertaken to represent. *Cf.* OSB Formal Ethics Op No 2005-46; OSB Formal Ethics Op No 2005-85. In addition, the fact that a lawyer cannot simultaneously represent both the issuer and the underwriter does not mean that the lawyer may not, if representing only one client, perform work that may, in fact, prove to be of benefit to both the issuer and the underwriter.

COMMENT: For additional information on this general topic and other related subjects, see *The Ethical Oregon Lawyer* § 10.2 to § 10.2-2(e)(7) (multiple-client conflicts rules) (OSB Legal Pubs 2015); *Restatement (Third) of the Law Governing Lawyers* §§ 121–123 (2000) (supplemented periodically); and ABA Model RPC 1.7.