

**FORMAL OPINION NO 2005-66**  
**Conflicts of Interest, Current Clients:**  
**Legal Aid Society**

**Facts:**

Lawyer *A*, who serves on the Legal Aid Society's Board of Directors, proposes to represent a client in a proceeding in which the opposing party would be represented by Lawyer *B*, a Legal Aid Society employee.

**Question:**

May Lawyer *A* and Lawyer *B* represent their respective clients as proposed?

**Conclusion:**

Yes, qualified.

**Discussion:**

Oregon RPC 6.3 provides:

A lawyer may serve as a director, officer or member of a legal services organization, apart from the law firm in which the lawyer practices, notwithstanding that the organization serves persons having interests adverse to a client of the lawyer. The lawyer shall not knowingly participate in a decision or action of the organization:

(a) if participating in the decision or action would be incompatible with the lawyer's obligations to a client under Rule 1.7; or

(b) where the decision or action could have a material adverse effect on the representation of a client of the organization whose interests are adverse to a client of the lawyer's.

Oregon RPC 1.7 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.

In the ordinary case, it is not likely that Lawyer *A*'s responsibilities as a board member of the Legal Aid Society will materially limit Lawyer *A*'s representation of the client within the meaning of Oregon RPC 1.7(a)(2). It is also not likely, in the ordinary case, that Lawyer *B*'s representation of the Legal Aid client will be limited by Lawyer *B*'s responsibilities to members of the Legal Aid Society board of directors within the meaning of Oregon RPC 1.7(a)(2). If there were such a limitation, however, the lawyers could proceed if the affected client gave informed consent, confirmed in writing as required by Oregon RPC 1.7(b). Lawyer *A* also must be mindful of the obligation under Oregon RPC 6.3(b) not to participate in board decisions that could have a material adverse effect on Lawyer *B*'s representation of the Legal Aid client in the matter.

As long as the conditions set forth in these rules are met, Lawyer *A* and Lawyer *B* may proceed as proposed.

**Approved by Board of Governors, August 2005.**

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COMMENT: For additional information on this general topic and related subjects, see *The Ethical Oregon Lawyer* § 3.5-3 (payment of fees by nonclients), § 9.2-1 (Oregon RPC 1.7(a)(2)), § 9.2-2 (exceptions to Oregon RPC 1.7(a)(2)), § 20.1 (conflicts-waiver letters) (OSB Legal Pubs 2015); *Restatement (Third) of the Law Governing Lawyers* §§ 134, 135 & cmt e (2000) (supplemented periodically); ABA Model RPC 1.8(f); ABA Model RPC 6.3; and ABA Model RPC 6.5.

