

FORMAL OPINION NO 2005-67

Conflicts of Interest, Current and Former Clients: County Counsel

Facts:

County Counsel is employed by County and is assigned, as County's representative, to negotiate County's collective-bargaining agreements with County employees. County Counsel also has the normal duty of advising County employees with respect to various matters of County business. County Counsel does not advise these employees on personal matters.

Question:

May County Counsel negotiate the collective-bargaining agreement with County employees?

Conclusion:

Yes.

Discussion:

In this circumstance, and based on the facts presented, County Counsel has only one client: County. Oregon RPC 1.13(a). The fact that County Counsel may, in the course of representing County, speak to County employees about County matters, does not transform these employees into County Counsel's clients. See, for example, OSB Formal Ethics Op No 2005-46 and sources cited therein.

Because County Counsel has only one client, there can be no current- or former-client conflicts under Oregon RPC 1.7 or Oregon RPC 1.9 as a matter of law. *In re Harrington*, 301 Or 18, 718 P2d 725 (1986); OSB Formal Ethics Op No 2005-57. However, County Counsel may have an obligation to explain his or her role as counsel for the county only, as required by Oregon RPC 1.13(f):

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In dealing with an organization's directors, officers, employees, members, shareholders or other constituents, a lawyer shall explain the identity of the client when the lawyer knows or reasonably should know that the organization's interests are adverse to those of the constituents with whom the lawyer is dealing.

Approved by Board of Governors, August 2005.

COMMENT: For additional information on this general topic and related subjects, see *The Ethical Oregon Lawyer* § 5.3-3 (governmental entities – identifying the client), § 10.2 to § 10.2-3 (multiple-client conflicts rules), § 11.4-1 (client identification for a government lawyer) (OSB Legal Pubs 2015); *Restatement (Third) of the Law Governing Lawyers* §§ 121–122, 128–131 (2000) (supplemented periodically); ABA Model RPC 1.7; and ABA Model RPC 1.9.