

FORMAL OPINION NO 2005-87
Unauthorized Practice of Law:
Financial and Estate Planning Service

Facts:

Estate Planning Service is owned by a CPA, a stockbroker who is a certified financial planner, a life insurance agent, and a casualty insurance agent. They propose to offer services to their clients that constitute the unlawful practice of law as provided in *Oregon State Bar v. John H. Miller & Co.*, 235 Or 341, 385 P2d 181 (1963).¹

Questions:

1. May Lawyer recommend clients to Estate Planning Service?
2. May Lawyer accept client referrals from Estate Planning Service to help those clients transact business with Estate Planning Service?
3. May Lawyer do legal work directly for Estate Planning Service to help Estate Planning Service transact business with its clients?

Conclusions:

1. No.
2. No.
3. No.

¹ In *John H. Miller & Co.*, 235 Or at 343–44, the defendant company engaged in financial and estate planning for individuals, as well as the sale of life insurance. The company would consider a variety of factors reflecting on tax liability in preparing the analysis. Much of the advice contained in the analysis performed for their clients involved the application of legal principles, primarily concerning the law of taxation. The court held this to be the practice of law.

Discussion:

Oregon RPC 5.5(a) provides:

A lawyer shall not practice law in a jurisdiction in violation of the regulation of the legal profession in that jurisdiction, or assist another in doing so.

Cf. OSB Formal Ethics Op No 2005-20. *See also* ORS 9.160 (except for *pro se* litigants, “a person may not practice law . . . unless the person is an active member of the Oregon State Bar”); *In re Morin*, 319 Or 547, 878 P2d 393 (1994); *In re Benson*, 12 DB Rptr 167 (1998); *Oregon State Bar v. Ortiz*, 77 Or App 532, 713 P2d 1068 (1986). *Cf. Kolker v. Duke City Collection Agency*, 750 F Supp 468 (DNM 1990).

Because by hypothesis the activities of Estate Planning Service constitute the unlawful practice of law, Lawyer cannot aid Estate Planning Service by referring clients to them, accepting referrals from them to assist clients in transacting business with them, or do legal work directly for them as outlined above.

Approved by Board of Governors, August 2005.

COMMENT: For additional information on this general topic and other related subjects, see OSB Formal Ethics Op No 2005-101 (rev 2015); OSB Formal Ethics Op No 2005-107; OSB Formal Ethics Op No 2005-137; *The Ethical Oregon Lawyer* § 13.2-2 (relationships with other businesses), § 13.2-2(b) (lawyers in business with nonlawyers), § 16.4-11(a) (failure to accomplish testamentary intent) (OSB Legal Pubs 2015); *Restatement (Third) of the Law Governing Lawyers* §§ 4, 10 (2000) (supplemented periodically); and ABA Model RPC 5.5. *See also* Washington Advisory Op No 1080 (1987); Washington Advisory Op No 1116 (1987); Washington Advisory Op No 1471 (1992); Washington Advisory Op No 1516 (1993) (Washington advisory opinions are available at <www.wsba.org/resources-and-services/ethics/advisory-opinions>).