

## FORMAL OPINION NO 2005-96

[REVISED 2014]

### Information Relating to the Representation of a Client: Notarial Journals

#### Facts:

Pursuant to ORS 194.300, an Oregon notary must keep a journal that contains the name, address, and signature of the person who signs certain notarized documents, as well as a notation of the type of document signed. When lawyers or members of their office staff are notaries, the persons whose documents are notarized may be clients.

#### Question:

What steps, if any, must a lawyer take or cause the lawyer's staff to take to protect subsequent signers of the notarial journal from reviewing prior entries?

#### Conclusion:

See discussion.

#### Discussion:

ORS 9.460(3) provides that a lawyer must “[m]aintain the confidences and secrets of the attorney’s clients consistent with the rules of professional conduct established pursuant to ORS 9.490.” Oregon RPC 1.6 also offers broad protection to information relating to the representation of a client.<sup>1</sup> *See also State v. Keenan*, 307 Or 515, 771 P2d

---

<sup>1</sup> Oregon RPC 1.6 provides:

(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. In those circumstances, a lawyer may disclose with respect to each affected client the client's identity, the identities of any adverse parties, the nature and extent of the legal services involved, and fee and payment information, but only if the information revealed would not compromise the attorney-client privilege or otherwise prejudice any of the clients. The lawyer or lawyers receiving the information shall have the same responsibilities as the disclosing lawyer to preserve the information regardless of the outcome of the contemplated transaction.

(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. A lawyer serving as a monitor of another lawyer on diversion, probation, conditional reinstatement or conditional admission shall have the same responsibilities as the monitored lawyer to preserve information relating to the representation of the monitored lawyer's clients, except to the extent reasonably necessary to carry out the monitoring lawyer's responsibilities under the terms of the diversion, probation, conditional reinstatement or conditional admission and in any proceeding relating thereto.

244 (1989); OSB Formal Ethics Op No 2005-81 (rev 2014); OSB Formal Ethics Op No 2005-141 (rev 2015).

If the information pertaining to a prior notarization constitutes or contains protected client information, lawyers must prohibit, and cause their office staff to prohibit, subsequent signers from reviewing these confidences or secrets. Presumably, this can be done either by covering over the names and signatures of other clients at the time of the subsequent signing or by having a separate page of the journal for notarial actions in which protected information relating to the representation of a client is involved.

**Approved by Board of Governors, April 2014.**

---

(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.

COMMENT: For additional information relating to this general topic and other related subjects, see *The Ethical Oregon Lawyer* § 6.1 to § 6.2-5 (basic elements of duty of confidentiality), § 6.3-1 (client consent), § 16.4-4 (errors committed by support staff) (OSB Legal Pubs 2015); *Restatement (Third) of the Law Governing Lawyers* §§ 59–60, 68–72, 77, 80 (2000) (supplemented periodically); and ABA Model RPC 1.6. See also Washington Advisory Op No 175 (1982) (available at <[www.wsba.org/resources-and-services/ethics/advisory-opinions](http://www.wsba.org/resources-and-services/ethics/advisory-opinions)>).

