

FORMAL OPINION NO 2005-102

[REVISED 2015]

Conflicts of Interest between Lawyer and Client, Public Officials, Conduct Prejudicial to Administration of Justice: Lawyer–Municipal Judge Representing Clients before City Council or Court

Facts:

Lawyer, who is engaged in private practice, is also a part-time municipal court judge. Lawyer has been asked to represent Client A before the town council in the town in which Lawyer is a part-time municipal court judge.

Lawyer is also asked to defend Client B in a murder case brought in circuit court. Lawyer anticipates that in defending Client B, Lawyer will have to cross-examine police officers who appear before Lawyer as witnesses when Lawyer acts as a municipal court judge.

Questions:

1. May Lawyer represent Client A?
2. May Lawyer represent Client B?

Conclusions:

1. Yes, qualified.
2. Yes, qualified.

Discussion:

Oregon RPC 8.4(a)(4) prohibits Lawyer from engaging in “conduct that is prejudicial to the administration of justice.” Oregon RPC 8.4(a)(5) prohibits Lawyer from stating or implying “an ability to influence improperly a government agency or official or to achieve results by means that violate these Rules or other law.” *Cf.* OSB Formal Ethics Op No 2005-14; OSB Formal Ethics Op No 2005-7 (rev 2014). The mere

fact that Lawyer would represent these two defendants does not indicate that a violation of any of these rules will occur.¹

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.

¹ With respect to these facts, Oregon RPC 1.12(a) does not appear to prohibit these representations. Oregon RPC 1.12(a) provides:

Except as stated in paragraph (d) and Rule 2.4(b), a lawyer shall not represent anyone in connection with a matter in which the lawyer participated personally and substantially as a judge or other adjudicative officer or law clerk to such a person or as an arbitrator, mediator or other third-party neutral, unless all parties to the proceeding give informed consent, confirmed in writing.

No conflict would exist under Oregon RPC 1.7(a) in Lawyer's representation of Client A and Client B because, in each of these instances, Lawyer would have only one client in a matter. *In re Harrington*, 301 Or 18, 718 P2d 725 (1986).

Under the facts given, there also appears to be no reason to believe that a self-interest conflict would exist under Oregon RPC 1.7(b) that would require the informed consent of Client A or Client B in accordance with Oregon RPC 1.7(b). OSB Formal Ethics Op No 2005-39 (rev 2014). There may be circumstances, however, in which there is a significant risk that Lawyer's representation of private clients would be materially limited by Lawyer's personal interests in the role of municipal court judge, in which case Lawyer would need to comply with Oregon RPC 1.7(a)(2) and 1.7(b).

Oregon RPC 1.11(d) is also relevant and provides, in pertinent part:

(d) Except as law may otherwise expressly permit, a lawyer currently serving as a public officer or employee:

(1) is subject to Rules 1.7 and 1.9; and

(2) shall not:

(i) use the lawyer's public position to obtain, or attempt to obtain, special advantage in legislative matters for the lawyer or for a client.

(ii) use the lawyer's public position to influence, or attempt to influence, a tribunal to act in favor of the lawyer or of a client.

....

(iv) either while in office or after leaving office use information the lawyer knows is confidential government information obtained while a public official to represent a private client.

....

On the present facts, there is no reason to believe that a violation of this rule would occur.

Approved by Board of Governors, February 2015.

COMMENT: For additional information on this general topic and other related subjects, see *The Ethical Oregon Lawyer* § 9.2-1(a) (risk that lawyer's personal interest will materially limit representation), § 9.6 (informed consent), § 11.4-5 (rules of professional conduct applicable to government lawyers), § 13.3-1(b) (affiliation with public officials), § 15.5-2 to § 15.5-3 (lawyers working as part-time judges), § 15.7-1 (relationships between lawyers and judges), chapter 20 (conflicts-waiver letters) (OSB Legal Pubs 2015); *Restatement (Third) of the Law Governing Lawyers* §§ 113, 122, 125 (2000) (supplemented periodically); ABA Model RPC 1.0(b), (e); ABA Model RPC 1.7; ABA Model RPC 1.11(d); ABA Model RPC 1.12; and ABA Model RPC 8.4(d).