

FORMAL OPINION NO 2005-106

[REVISED 2021]

Information about Legal Services: Purchase of Tax Preparation Business

Facts:

Lawyer represents clients in tax matters. Lawyer would like to purchase the tax preparation business of Tax Consultant, a licensed nonlawyer tax consultant.

Question:

May Lawyer make the purchase?

Conclusion:

Yes.

Discussion:

Neither the Oregon Rules of Professional Conduct (RPCs) nor ORS chapter 9 prohibit the purchase of businesses by lawyers.¹

However, Lawyer may not engage in improper solicitation. Lawyer cannot use this acquisition directly or indirectly to engage in improper in-person solicitation of additional clients. *See* Oregon RPC 7.3 (generally limiting in-person, telephone, or real-time electronic solicitation);² Oregon

¹ Oregon RPC 1.17 however does specify ethical rules related to the sale or purchase of a law practice.

² Oregon RPC 7.3 provides:

(a) A lawyer shall not by in-person, live telephone or real-time electronic contact solicit professional employment when a significant motive for the lawyer's doing so is the lawyer's pecuniary gain, unless the person contacted:

(1) is a lawyer; or

(2) has a family, close personal, or prior professional relationship with the lawyer.

RPC 8.4(a)(1) (making it professional misconduct for a lawyer to violate the Oregon RPCs “through the acts of another”). For example, Lawyer could not make it an expressed or implied condition of the acquisition that Tax Consultant solicit clients for Lawyer.³ Oregon RPC 7.2;⁴ OSB Formal

(b) A lawyer shall not solicit professional employment by written, recorded or electronic communication or by in-person, telephone or real-time electronic contact even when not otherwise prohibited by paragraph (a), if:

(1) the lawyer knows or reasonably should know that the physical, emotional or mental state of the target of the solicitation is such that the person could not exercise reasonable judgment in employing a lawyer;

(2) the target of the solicitation has made known to the lawyer a desire not to be solicited by the lawyer; or

(3) the solicitation involves coercion, duress or harassment.

(c) Every written, recorded or electronic communication from a lawyer soliciting professional employment from anyone known to be in need of legal services in a particular matter shall include the words “Advertising Material” on the outside of the envelope, if any, and at the beginning and ending of any recorded or electronic communication, unless the recipient of the communication is a person specified in paragraph (a).

(d) Notwithstanding the prohibitions in paragraph (a), a lawyer may participate with a prepaid or group legal service plan operated by an organization not owned or directed by the lawyer that uses in-person or telephone contact to solicit memberships or subscriptions for the plan from persons who are not known to need legal services in a particular matter covered by the plan.

³ We express no opinion as to whether Tax Consultant is under any obligation of confidentiality that would prevent disclosure to Lawyer.

⁴ Oregon RPC 7.2 provides:

(a) Subject to the requirements of Rules 7.1 and 7.3, a lawyer may advertise services through written, recorded or electronic communication, including public media.

(b) A lawyer shall not give anything of value to a person for recommending the lawyer’s services except that a lawyer may

Ethics Opinion No. 2005-2 (rev 2014). Without endorsement or influence from Lawyer, Tax Consultant may inform their clients of their possible need for legal services and inform them of Lawyer's availability to do the work. However, if clients of the Lawyer are clients of the tax preparation business after purchase, Lawyer may solicit them as a prior business relationship exists.

If clients of Lawyer are also clients of the tax preparation business of Tax Consultant, Lawyer may be required to determine if Lawyer's business interest in the tax preparation business gives rise to a conflict of interest under Oregon RPC 1.7(a)(2)⁵ or Oregon RPC 1.8(a).⁶ If so, Lawyer

(1) pay the reasonable costs of advertisements or communications permitted by this Rule;

(2) pay the usual charges of a legal service plan or a not-for-profit lawyer referral service;

(3) pay for a law practice in accordance with Rule 1.17; and

(4) give nominal gifts as an expression of appreciation that are neither intended nor reasonably expected to be a form of compensation for recommending a lawyer's services.

(c) Any communication made pursuant to this rule shall include the name and office address of at least one lawyer or law firm responsible for its content.

⁵ Oregon RPC 1.7(a)(2) 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:

....

(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; . . .

⁶ Oregon RPC 1.8(a) provides

(a) A lawyer shall not enter into a business transaction with a client or knowingly acquire an ownership, possessory, security or other pecuniary interest adverse to a client unless:

may be required to obtain informed consent in writing from the client under Oregon RPC 1.7(b)(4) or Oregon RPC 1.8(a)(3), or may be required to withdraw from representation if the conflict may not be waived. A more detailed analysis of the ethical concerns and potential conflicts of a lawyer acting in multiple roles may be found in OSB Formal Ethics Opinion No. 2006-176 (rev 2015).

Approved by Board of Governors, February 2021.

(1) the transaction and terms on which the lawyer acquires the interest are fair and reasonable to the client and are fully disclosed and transmitted in writing in a manner that can be reasonably understood by the client;

(2) the client is advised in writing of the desirability of seeking and is given a reasonable opportunity to seek the advice of independent legal counsel on the transaction; and

(3) the client gives informed consent, in a writing signed by the client, to the essential terms of the transaction and the lawyer's role in the transaction, including whether the lawyer is representing the client in the transaction.

COMMENT: For additional information on this general topic and other related subjects, see *The Ethical Oregon Lawyer* § 2.4-1 (advertising must not be false or misleading), § 2.4-2 (regulation of time, place, and manner of advertising), § 2.4-3 (direct-mail and electronic-mail advertising), § 2.4-4 (marketing), § 2.61 to § 2.6-4 (in-person, telephone, and real-time solicitation), § 13.2-2 to § 13.2-2(b) (relationships with other businesses) (OSB Legal Pubs 2015); ABA Model RPC 7.2–7.3; ABA Model RPC 5.6(a); and ABA Model RPC 8.4(a). *See also* Washington Advisory Op No 1953 (2001); Washington Advisory Op No 1965 (2001); Washington Advisory Op No 2055 (2004); and Washington Advisory Op No 2098 (2005). (Washington advisory opinions are available at <www.wsba.org/resources-and-services/ethics/advisory-opinions>).