

FORMAL OPINION NO 2005-115

[REVISED 2014]

Unauthorized Practice of Law: Third-Party Influence

Facts:

Corporation, which is not authorized to practice law in Oregon, markets estate-planning services in Oregon through sales representatives. When a customer purchases Corporation's services, Corporation agrees to evaluate the estate-planning needs of the customer, select appropriate planning methods, draft the documents, and forward them to the customer's sales representative.

In the sales documents, customers authorize Corporation to obtain local counsel for the express and limited purposes of reviewing the documents to determine whether they comply with Oregon law and to assist in executing the documents. Corporation pays the lawyer for this work.

Question:

May an Oregon lawyer accept representation of Corporation's customers in these circumstances?

Conclusion:

No.

Discussion:

Oregon RPC 5.5(a) provides:

(a) 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.

See also Oregon RPC 8.4(a)(1), which makes it professional misconduct for a lawyer to violate the Oregon Rules of Professional Conduct “through the acts of another.”

When Corporation not only provides forms but also personally consults with Customers, explains the documents, makes recommendations, and renders advice, the services performed by Corporation constitute the unauthorized practice of law. *Oregon State Bar v. John H. Miller & Co.*, 235 Or 341, 343–44, 385 P2d 181 (1963). *See also Oregon State Bar v. Gilchrist*, 272 Or 552, 563–64, 538 P2d 913 (1975); *Oregon State Bar v. Taub*, 190 Or App 280, 78 P3d 114 (2003), *rev den*, 336 Or 534 (2004); *Oregon State Bar v. Sec. Escrows, Inc.*, 233 Or 80, 89, 377 P2d 334 (1962).

Lawyer may not represent Corporation’s customers because to do so would be aiding a nonlawyer in the unauthorized practice of law in violation of Oregon RPC 5.5(a). Such conduct is not cured by a disclaimer and suggestion to seek separate counsel. *In re Phillips*, 338 Or 125, 107 P3d 615 (2005); *Oregon State Bar v. John H. Miller*, 235 Or at 344. *See also* OSB Formal Ethics Op No 2005-101 (rev 2015); OSB Formal Ethics Op No 2005-87; OSB Formal Ethics Op No 2005-20.¹

The proposed arrangement also violates Oregon RPC 5.4(c) as Corporation expressly limits Lawyer’s professional judgment in representing customers to whether documents comply with Oregon law.²

¹ A lawyer who purports to advise the customer about the documents will have at least a waivable conflict under Oregon RPC 1.7(a)(2) and possibly a nonwaivable conflict under Oregon RPC 1.7(b)(3).

² Oregon RPC 5.4(c) provides:

(c) A lawyer shall not permit a person who recommends, employs, or pays the lawyer to render legal services for another to direct or regulate the lawyer’s professional judgment in rendering such legal services.

Approved by Board of Governors, June 2014.

COMMENT: For additional information on this general topic and other related subjects, see *The Ethical Oregon Lawyer* § 2.6-4 (limitations on obtaining employment through third-party recommendations), § 2.6-5 (lawyer-referral services), § 13.2-2(b) (lawyers in business with nonlawyers), § 16.4-11(a) (estate planning—failure to accomplish testamentary intent) (OSB Legal Pubs 2015); *Restatement (Third) of the Law Governing Lawyers* § 4 (2000) (supplemented periodically); ABA Model RPC 5.4(c); ABA Model RPC 5.5(a); ABA Model RPC 7.3; and ABA Model RPC 8.4(a). See also Washington Advisory Op No 899 (1985); Washington Advisory Op No 1471 (1992); Washington Advisory Op No 1568 (1994); Washington Advisory Op No 1747 (1997); Washington Advisory Op No 1879 (1999). (Washington advisory opinions are available at <www.wsba.org/resources-and-services/ethics/advisory-opinions>.)

