

FORMAL OPINION NO 2005-141

[REVISED 2015]

Information Relating to the Representation of a Client: Recycling of Documents

Facts:

Law Firm would like to contract with a recycling service to dispose of legal documents and other office paper that may contain information relating to the representation of clients.

Question:

May Law Firm recycle client documents using a recycling service?

Conclusion:

Yes.

Discussion:

Except under limited circumstances, a lawyer is prohibited from revealing information relating to the representation of a client. Oregon RPC 1.6.¹

¹ 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;

Oregon RPC 5.3 provides:

With respect to a nonlawyer employed or retained, supervised or directed by a lawyer:

(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.

(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.

(a) a lawyer having direct supervisory authority over the nonlawyer shall make reasonable efforts to ensure that the person's conduct is compatible with the professional obligations of the lawyer; and

(b) except as provided by Rule 8.4(b), a lawyer shall be responsible for conduct of such a person that would be a violation of the Rules of Professional Conduct if engaged in by a lawyer if:

(1) the lawyer orders or, with the knowledge of the specific conduct, ratifies the conduct involved; or

(2) the lawyer is a partner or has comparable managerial authority in the law firm in which the person is employed, or has direct supervisory authority over the person, and knows of the conduct at a time when its consequences can be avoided or mitigated but fails to take reasonable remedial action.

The reality of modern law practice requires disposal of a great deal of paper, some of which will contain information protected by Oregon RPC 1.6. Oregon RPC 1.6(c) requires lawyers to take reasonable efforts to prevent inadvertent or unauthorized access. As long as Law Firm makes reasonable efforts to ensure that the recycling company's conduct is compatible with Law Firm's obligation to protect client information, the proposed contract is permissible. Reasonable efforts include, at least, instructing the recycling company about Law Firm's duties pursuant to Oregon RPC 1.6 and obtaining its agreement to treat all materials appropriately. *See* OSB Formal Ethics Op No 2005-129 (rev 2014); OSB Formal Ethics Op No 2005-44.

Approved by Board of Governors, April 2015.

COMMENT: For additional information on this general topic and other related subjects, see *The Ethical Oregon Lawyer* § 6.2-1 to § 6.2-5 (basic components of duty of confidentiality) (OSB Legal Pubs 2015); *Restatement (Third) of the Law Governing Lawyers* §§ 11, 59–60 (2000) (supplemented periodically); and ABA Model RPC 5.3.

