FORMAL OPINION NO 2005-155

Conflicts of Interest:
Multiple “Of Counsel” Relationships

Facts:

Lawyer A operates Law Firm 1 as a sole practitioner. Lawyer A is also Of Counsel to Law Firm 2 and is listed as such on Law Firm 2’s letterhead. Lawyer B is a sole practitioner who wishes to be Of Counsel to Law Firm 1.

Question:

What conflict-of-interest issues are implicated by the proposed arrangement?

Conclusion:

See discussion.

Discussion:

The Oregon Rules of Professional Conduct (RPCs) do not provide a precise definition of the “Of Counsel” relationship, but such relationships clearly are permitted. Oregon RPC 1.0(d) provides:

(d) “Firm” or “law firm” denotes a lawyer or lawyers, including “Of Counsel” lawyers, in a law partnership, professional corporation, sole proprietorship or other association authorized to practice law; or lawyers employed in a private or public legal aid or public defender organization, a legal services organization or the legal department of a corporation or other public or private organization. Any other lawyer, including an office sharer or a lawyer working for or with a firm on a limited basis, is not a member of a firm absent indicia sufficient to establish a de facto law firm among the lawyers involved.
Oregon RPC 7.5(e) provides in part:

(e) A lawyer may be designated “Of Counsel” on a letterhead if the lawyer has a continuing professional relationship with a lawyer or law firm, other than as partner or associate. . . .

As Of Counsel, Lawyer B is a member of Law Firm 1 and Lawyer A is a member of Law Firm 2. As a result, Law Firm 1, Law Firm 2, and Lawyer B’s sole practice will be treated as a single unit for conflict-of-interest purposes. The clients of Law Firm 2 are deemed to be clients of Law Firm 1 (through the Of Counsel relationship of Lawyer A and Law Firm 2) while the clients of Law Firm 1 (including the clients of Law Firm 2), will be deemed to be clients of Lawyer B.

The Of Counsel relationship can and should be distinguished from the situation in which law firms, or a lawyer and a law firm, associate with each other or are employed as co-counsel on specific cases. An occasional collaboration with no indicia sufficient to establish a de facto law firm among the lawyers will avoid the implication that they are members of the same firm.

Approved by Board of Governors, April 2014.