

FORMAL OPINION NO 2005-155

[REVISED 2014]

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.

COMMENT: See OSB Formal Ethics Op No 2005-50 (rev 2014); OSB Formal Ethics Op No 2005-44; OSB Formal Ethics Op No 2005-12 (rev 2015). For additional information on this general topic and other related subjects, see *The Ethical Oregon Lawyer* § 2.5-2 (firm names and relationships) (OSB Legal Pubs 2015); and *Restatement (Third) of the Law Governing Lawyers* §§ 9, 123 (2000) (supplemented periodically).