

## FORMAL OPINION NO 2005-168

[REVISED 2018]

### Lawyer-Owned Lawyer-Referral Service

#### **Facts:**

Lawyer wishes to open a for-profit lawyer-referral service available to the public. The service will be called “XYZ Lawyer-Referral Service.” Lawyer will be the sole owner of XYZ, which Lawyer plans to incorporate as an independent entity. Lawyer plans to advertise the service in the local media.

Lawyer intends to operate XYZ Lawyer-Referral Service out of Lawyer’s own law office. Lawyer and Lawyer’s legal secretary will screen incoming calls to determine the issues raised by the callers. Lawyer has established several “panels” by substantive area to handle the matters referred. On occasion, however, Lawyer may provide legal advice directly to callers as well as through XYZ Lawyer-Referral Service.

#### **Questions:**

1. May Lawyer have an ownership interest in a for-profit lawyer-referral service?
2. May Lawyer participate in the management of a for-profit lawyer-referral service?
3. May a lawyer-referral service provide legal advice to callers in the course of “screening” their inquiries?

#### **Conclusions:**

1. Yes, qualified.
2. Yes, qualified.
3. No.

**Discussion:**

1. *Lawyer Ownership of For-Profit Lawyer-Referral Service.*

The rules of professional conduct do not prohibit for-profit lawyer-referral services. Nevertheless, the referral service must not practice law and must not otherwise assist the lawyer-owner in violations of the Oregon Rules of Professional Conduct (RPCs). *See, e.g.*, OSB Formal Ethics Op No 2005-10 (lawyer permitted to operate real estate firm and title insurance company); OSB Formal Ethics Op No 2005-101 (rev 2015) (lawyer and psychologist could form domestic relations mediation service); OSB Formal Ethics Op No 2005-107 (lawyer may join nonlawyer in preparing and marketing audiotapes and videotapes on law-related subjects); OSB Formal Ethics Op No 2005-137 (lawyer could participate in joint venture with nonlawyer to offer interactive, online legal information service). *But see* OSB Formal Ethics Op No 2005-10; OSB Formal Ethics Op No 2005-106 (rev 2016); OSB Formal Ethics Op No 2005-108 (rev 2015) (lawyer cannot use other businesses for improper in-person solicitation of legal work or misrepresent nature of services provided).

2. *Lawyer Management of For-Profit Lawyer-Referral Service.*

A lawyer-owner may provide general management and administration of a referral service. *See* OSB Formal Ethics Op No 2005-138 (legal aid service could provide general administration over associated referral service). This would include, for example, hiring and supervising operations management for the referral service. Similarly, the lawyer-owner may operate the referral service at the same physical premises as the lawyer's law practice. *See* OSB Formal Ethics Op No 2005-2 (rev 2018) (lawyer may share office space with other businesses).

Even in these circumstances, however, a lawyer-owner should take precautions to avoid participating in the actual "screening" of incoming inquiries in light of the risk that a caller (1) might impart confidential information to the lawyer and thereby create potential conflicts with the lawyer's other clients, or (2) would form the reasonable belief that the lawyer had become the caller's lawyer. *See* OEC 503(1)(a) (*client* means a person "who consults a lawyer with a view to obtaining professional legal services from the lawyer" for purposes of the lawyer-client privilege);

OSB Formal Ethics Op No 2005-138; *In re Weidner*, 310 Or 757, 770–71, 801 P2d 828 (1990) (outlining “reasonable expectations of the client” test for determining whether lawyer-client relationship has been formed).

At the other end of the spectrum is *In re Fellows*, 9 DB Rptr 197, 199–200 (1995). The disciplined lawyer in *Fellows* operated a referral service called “Case Evaluation & Referral Service” that was not an independent business but was merely an assumed business name for the lawyer. Such conduct violates both Oregon RPC 7.1 and Oregon RPC 8.4(a)(3). In addition, the operation of a lawyer-owned referral service in this manner would constitute doing business with a client within the meaning of Oregon RPC 1.8(a).

3. *Legal Advice by the Referral Service to Callers.*

Because a referral service itself is not licensed to practice law, it may not provide legal advice to the public. ORS 9.160 (only those licensed to practice law may provide legal advice to third parties). Similarly, a lawyer may not assist a nonlawyer in the unlawful practice of law. Oregon RPC 5.5(a). Consequently, a lawyer may not assist a referral service in its delivering legal advice to the public either. OSB Formal Ethics Op No 2005-87.

**Approved by Board of Governors, June 2018.**

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COMMENT: For additional information on this general topic and other related subjects, see *The Ethical Oregon Lawyer* § 2.4-2 (regulation of time, place, and manner of advertising), § 2.6-5 (lawyer-referral services, prepaid legal-services plans, and legal-services organizations), § 3.5-6(a) (payments to nonlawyers), § 13.2-2(b) (lawyers in business with nonlawyers) (OSB Legal Pubs 2015); *Restatement (Third) of the Law Governing Lawyers* §§ 3, 10 (2000); and ABA Model RPC 7.3(d).

