

## FORMAL OPINION NO 2005-175

[REVISED 2021]

### **Information about Legal Services: Lawyer Membership in Business-Referral Clubs**

#### **Facts:**

Lawyer has been asked to join the local chapter of a business and professional “networking association” (the Association). According to its published policies, the purpose of the Association is to facilitate the referral of business between members. Attendance at monthly meetings is emphasized and making referrals is a condition of maintaining membership. Members must follow up on referrals received through the Association, although the Association’s rules acknowledge that the formal standards of ethics of a profession supersede any Association rules.

#### **Question:**

May Lawyer participate in the activities of the Association?

#### **Conclusion:**

No.

#### **Discussion:**

Oregon RPC 7.2(b) provides:

(b) A lawyer shall not give anything of value to a person for recommending the lawyer’s services except that a lawyer may

(1) pay the reasonable costs of advertisements or communications permitted by this Rule;

(2) pay the usual charges of a legal service plan or lawyer referral service;

(3) pay for a law practice in accordance with Rule 1.17; and

(4) give nominal gifts as an expression of appreciation that are neither intended nor reasonably expected to be a form of compensation for recommending a lawyer’s services.

Similarly, Oregon RPC 5.4(e) provides:

A lawyer shall not refer a client to a nonlawyer with the understanding that the lawyer will receive a fee, commission, or anything of value in exchange for the referral, but a lawyer may accept gifts in the ordinary course of social or business hospitality.

Participation in the activities of the Association in accordance with its stated policies would violate both of those rules. The stated purpose of the Association is the exchange of business referrals between members. A business referral is a thing of value. If Lawyer refers Lawyer's clients to Association members, then in making the referrals Lawyer is giving something of value in exchange for the other member to promote, recommend, or secure Lawyer's employment. This exchange violates Oregon RPC 7.2(b). OSB Formal Ethics Opinion No. 2005-2 (rev 2018) similarly concludes that a lawyer cannot ethically enter into an agreement for reciprocal referrals between a lawyer and a trust company because the quid pro quo nature of the arrangement would violate this rule.

Further, if other Association members promise to refer clients to Lawyer, then Lawyer will receive something of value in exchange for making referrals of Lawyer's clients to other nonlawyer members of the Association. This exchange violates Oregon RPC 5.4(e).<sup>1</sup>

Business development is a fact of life for modern professionals and the rules of professional conduct do not prohibit participation in groups at which lawyers can network and learn about business opportunities. The problem with participation in the Association described here is not that it, like many civic groups, limits membership to one person in an occupation or profession. The ethical prohibition is against giving or receiving reciprocal referrals. Moreover, substance must rule over form and a lawyer cannot join a group such as the Association on the premise that the rules

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<sup>1</sup> This exchange of referrals is generally distinguishable from legal-service organizations and similar plans. Oregon RPC 7.2(b)(2) expressly allows a lawyer or law firm to pay the usual charges of a legal-services plan or a lawyer-referral service. *See, e.g.*, OSB Formal Ethics Op No 2005-79 (rev 2018); OSB Formal Ethics Op No 2005-168 (rev 2018). The Association is not one of those allowed plans or services because the Association's referrals are not limited solely to referrals to lawyers.

are suspended for lawyers if, in fact, the referral requirements are a condition of membership.

Even in a group that does not require reciprocal referrals, lawyers must be careful that their follow-up on any referrals received is consistent with Oregon RPC 7.1,<sup>2</sup> and the solicitation rules in Oregon RPC 7.3.<sup>3</sup>

**Approved by Board of Governors, February 2021.**

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<sup>2</sup> Oregon RPC 7.1 provides:

A lawyer shall not make a false or misleading communication about the lawyer or the lawyer's services. A communication is false or misleading if it contains a material misrepresentation of fact or law, or omits a fact necessary to make the statement considered as a whole not materially misleading.

<sup>3</sup> Oregon RPC 7.3 provides:

A lawyer shall not solicit professional employment by any means when:

(a) the lawyer knows or reasonably should know that the physical, emotional or mental state of the subject of the solicitation is such that the person could not exercise reasonable judgment in employing a lawyer;

(b) the person who is the subject of the solicitation has made known to the lawyer a desire not to be solicited by the lawyer; or

(c) the solicitation involves coercion, duress or harassment.

COMMENT: For additional information on this general topic and other related subjects, see *The Ethical Oregon Lawyer* § 2.4-4 (marketing, public relations, and public educational programs), § 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* § 9 (2000); ABA Model RPC 5.4; and ABA Model RPC 7.2.