

FORMAL OPINION NO 2005-18

Competence and Diligence: Buying Up Client's Bad Checks

Facts:

Lawyer is asked to represent Client, who is under investigation for negotiating bad checks. Client would like Lawyer to use Client's money to buy up as many of Client's bad checks as possible in order to limit Client's exposure in the criminal proceedings. For purposes of this opinion, it is assumed that Lawyer's actions will be lawful.

Question:

May Lawyer do so?

Conclusion:

Yes, qualified.

Discussion:

Oregon RPC 1.2 provides, in pertinent part:

(a) . . . a lawyer shall abide by a client's decisions concerning the objectives of representation and, as required by Rule 1.4, shall consult with the client as to the means by which they are to be pursued. A lawyer may take such action on behalf of the client as is impliedly authorized to carry out the representation. . . .

(b) A lawyer may limit the scope of the representation if the limitation is reasonable under the circumstances and the client gives informed consent.

(c) A lawyer shall not counsel a client to engage, or assist a client, in conduct that the lawyer knows is illegal or fraudulent, but a lawyer may discuss the legal consequences of any proposed course of conduct with a client and may counsel or assist a client to make a good faith effort to determine the validity, scope, meaning or application of the law.

Oregon RPC 8.4(a) provides:

It is professional misconduct for a lawyer to:

(1) violate the Rules of Professional Conduct, knowingly assist or induce another to do so, or do so through the acts of another;

(2) commit a criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects;

(3) engage in conduct involving dishonesty, fraud, deceit or misrepresentation that reflects adversely on the lawyer's fitness to practice law;

(4) engage in conduct that is prejudicial to the administration of justice;

....

(6) knowingly assist a judge or judicial officer in conduct that is a violation of applicable rules of judicial conduct or other law.

Because the actions that Client has asked Lawyer to perform are lawful, Lawyer has a duty to act in accordance with Client's directions. *Cf. In re Hockett*, 303 Or 150, 734 P2d 877 (1987) (disciplining lawyer under former DR 7-102(A)(7) for advising client to take actions to defraud creditors).¹

Approved by Board of Governors, August 2005.

¹ See *In re Claussen*, 331 Or 252, 14 P3d 586 (2000) (lawyer facilitated client's scheme to defraud, but lawyer did not commit fraud because lawyer did not know actions were illegal or fraudulent); *In re Huffman*, 328 Or 567, 983 P2d 534 (1999).

COMMENT: For additional information on this general topic and related subjects, see *The Ethical Oregon Lawyer* § 7.3 (diligence) (OSB Legal Pubs 2015).