

FORMAL OPINION NO 2005-20

Unauthorized Practice of Law: Assisting Nonlawyers

Facts:

Lawyer *A* is asked to assist nonlawyers in lawfully handling FED actions pursuant to ORS 105.105 to 105.168.

Lawyer *B* is asked to assist in the collection of debts by a debt collection agency operating lawfully pursuant to ORS 697.005 to 697.992.

Lawyer *C* proposes to use a debt collection agency to collect debts owed to Lawyer *C* by Lawyer *C*'s clients as well as debts that may be owed to the clients of Lawyer *C*.

Lawyer *D* proposes to prepare a form letter for a nonlawyer client to use by "filling in the blanks" and then signing Lawyer *D*'s name without any substantive review of the letter as used in a particular circumstance by Lawyer *D*. Lawyer *D* also proposes to have legal assistants in Lawyer *D*'s office draft pleadings that Lawyer *D* would sign but not actually review before filing.

Lawyer *E* is asked to work as counsel for a title insurance and escrow company and, in that capacity, take steps as a lawyer to assist the title insurance company in performing functions beyond those permitted of nonlawyers in *Oregon State Bar v. Sec. Escrows, Inc.*, 233 Or 80, 377 P2d 334 (1962).

Questions:

1. May Lawyer *A* comply with the request?
2. May Lawyer *B* comply with the request?
3. Is the proposed conduct of Lawyer *C* ethical?

4. Is the proposed conduct of Lawyer *D* ethical?
5. May Lawyer *E* comply with the request?

Conclusions:

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

Discussion:

These questions are governed primarily by Oregon RPC 5.5(a), which provides that a lawyer shall not “assist another” to practice law in a jurisdiction “in violation of the regulation of the legal profession.” Because Lawyers *A* and *B* propose to assist their clients in conduct that may lawfully be performed by nonlawyers, Lawyer *A* and Lawyer *B* have not violated Oregon RPC 5.5(a). Similarly, Lawyer *C* can use a collection agency to collect Lawyer *C*’s own debts or to assist in the collection of debts owed to Lawyer *C*’s clients. Care must be taken in the latter case, however, to assure that Lawyer *C* does not “share legal fees with a nonlawyer” within the meaning of Oregon RPC 5.4(a). *Cf. In re Little*, 247 Or 503, 431 P2d 284 (1967).¹

The conduct of Lawyer *D*, however, would clearly run afoul of Oregon RPC 5.5(a). A lawyer must supervise and control what is done in the lawyer’s name. *In re Jones*, 308 Or 306, 779 P2d 1016 (1989). Similarly, the court in *Sec. Escrows, Inc.*, 233 Or 80, sets the limits with respect to what nonlawyers may do in title- and escrow-related matters. If Lawyer *E* assists nonlawyer employees of the company in going beyond

¹ See also *In re Morin*, 319 Or 547, 878 P2d 393 (1994) (unlawful practice of law with respect to former DR 3-101(A)).

these limits or otherwise assists the company in practicing law, Lawyer *E* would be in violation of Oregon RPC 5.5(a).

Approved by Board of Governors, August 2005.

COMMENT: For additional information on this general topic and related subjects, see *The Ethical Oregon Lawyer* § 3.4-18 (arbitration of fee disputes), § 13.2-2(b) (lawyers in business with nonlawyers) (OSB Legal Pubs 2015); *Restatement (Third) of the Law Governing Lawyers* §§ 4, 10 cmt h (2000) (supplemented periodically); and ABA Model RPC 5.5.

