

FORMAL OPINION NO 2005-22
Conflicts of Interest, Current Clients:
Avoiding Influence by Others

Facts:

An insurance adjuster who has reached a settlement with the parents of an injured minor requests that Lawyer handle a conservatorship proceeding to effect the settlement. The adjuster offers to pay Lawyer's fees and advises that neither the minor nor the minor's parents are represented by counsel.

Question:

May Lawyer do so?

Conclusion:

Yes, qualified.

Discussion:

This matter is governed by Oregon RPC 1.8(f), which provides:

A lawyer shall not accept compensation for representing a client from one other than the client unless:

- (1) the client gives informed consent;
- (2) there is no interference with the lawyer's independence of professional judgment or with the client-lawyer relationship; and
- (3) information related to the representation of a client is protected as required by Rule 1.6.

This rule should be read with Oregon RPC 5.4(c), which provides:

A lawyer shall not permit a person who recommends, employs, or pays the lawyer to render legal services for another to direct or regulate the lawyer's professional judgment in rendering such legal services.

The term *informed consent* is defined in Oregon RPC 1.0(g):

“Informed consent” denotes the agreement by a person to a proposed course of conduct after the lawyer has communicated adequate information and explanation about the material risks of and reasonably available alternatives to the proposed course of conduct. When informed consent is required by these Rules to be confirmed in writing or to be given in a writing signed by the client, the lawyer shall give and the writing shall reflect a recommendation that the client seek independent legal advice to determine if consent should be given.

Lawyer must consult with and obtain the informed consent of the minor and the minor’s parents before proceeding in this matter. When that consent is obtained, and if Lawyer does not permit the adjuster to direct or regulate the services provided, Lawyer may undertake the representation.¹

Approved by Board of Governors, August 2005.

¹ Cf. *In re Benson*, 12 DB Rptr 167 (1998) (lawyer disciplined under *former* DR 5-108 for giving advice to customers of living trust company while paid by company for his services and directed by company, without disclosure of the potential adverse impact to his clients); *In re Richards*, 8 DB Rptr 71 (1994) (lawyer disciplined under *former* DR 5-108 for being paid and directed by person other than his client when client could not be located and therefore could not consent).

COMMENT: For additional information on this general topic and related subjects, see *The Ethical Oregon Lawyer* § 3.5-3 (payment of fees by nonclients), § 5.1 (identifying the client), § 9.2-1 (Oregon RPC 1.7(a)(2)), § 9.6 (informed consent), § 18.2-1(a) (initial contact), § 18.3-9 (ethical duties to children), § 20.2-1 to § 20.2-2 (definitions of *informed consent* and *written confirmation*) (OSB Legal Pubs 2015); *Restatement (Third) of the Law Governing Lawyers* § 134 (2000) (supplemented periodically); ABA Model RPC 1.8(f); and ABA Model RPC 5.4. See also OSB Formal Ethics Op No 2005-30 (rev 2016); OSB Formal Ethics Op No 2005-66; OSB Formal Ethics Op No 2005-79 (rev 2014); OSB Formal Ethics Op No 2005-115 (rev 2014); OSB Formal Ethics Op No 2005-116; OSB Formal Ethics Op No 2005-149.