

FORMAL OPINION NO 2005-24

**Unauthorized Practice of Law:
Employing and Compensating Nonlawyers and
Disbarred and Suspended Lawyers**

Facts:

Lawyer wishes to employ suspended or disbarred lawyers to assist Lawyer in performing functions that do not include giving legal advice and can lawfully be performed by nonlawyers, such as legal assistants or law clerks.

Question:

May Lawyer do so?

Conclusion:

Yes, qualified.

Discussion:

Oregon RPC 5.5(a) provides that “[a] lawyer shall not practice law in a jurisdiction in violation of the regulation of the legal profession in that jurisdiction, or assist another in doing so.” Also potentially relevant is Oregon RPC 5.4(a), which provides that “[a] lawyer or law firm shall not share legal fees with a nonlawyer” except in certain circumstances not material to this opinion.

Suspended or disbarred lawyers may not practice law and may not receive a share or percentage of legal fees earned by Lawyer on any specific case. However, this does not preclude other forms of compensation. *Compare Application of Kraus*, 295 Or 743, 670 P2d 1012 (1983) (refusing to reinstate suspended lawyer who continued to practice law

during suspension period)¹, with *State ex rel. Oregon State Bar v. Lenske*, 284 Or 23, 584 P2d 759 (1978) (dismissing contempt proceedings against suspended lawyer when suspended lawyer's discussions with clients and drafting of documents during suspension period were either in presence of or supervised and approved by licensed lawyers).

Approved by Board of Governors, August 2005.

¹ See also *In re Koliha*, 330 Or 402, 9 P3d 102 (2000) (lawyer filed pleadings on behalf of client and appeared in court, holding herself out as an active bar member, when in fact she was suspended from the practice of law); *In re Whipple*, 320 Or 476, 886 P2d 7 (1994) (suspended lawyer's discussions with client regarding probate and duties of personal representative constituted unlawful practice of law).

COMMENT: For additional information on this general topic and related subjects, see *The Ethical Oregon Lawyer* § 13.2-2 (relationships with other businesses), § 13.2-2(b) (lawyers in business with nonlawyers), § 13.3-2(a) (responsibility for lawyer's own conduct and for others whom lawyer supervises) (OSB Legal Pubs 2015); ORS 9.160–9.166; *Restatement (Third) of the Law Governing Lawyers* §§ 3–4 (2000) (supplemented periodically); and ABA Model RPC 5.5.