

FORMAL OPINION NO 2005-26

Lawyer-Client Relationship: Endorsing Check on Client's Behalf, Lawyer as Agent

Facts:

Client retains Lawyer to represent Client as a plaintiff in personal-injury litigation. Acting on authority from Client, Lawyer settles the case and receives a check from the defendant made payable jointly to Lawyer and Client.

Questions:

1. May Lawyer endorse the check on behalf of Client absent authorization from Client to do so?
2. May Lawyer endorse the check on Client's behalf if granted authorization to do so?

Conclusions:

1. No.
2. Yes.

Discussion:

Oregon RPC 1.2(a) is relevant:

[A] lawyer shall abide by a client's decisions concerning the objectives of representation and . . . 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. A lawyer shall abide by a client's decision whether to settle a matter. . . .

The lawyer-client relationship is based on the law of agency and on the lawyer's fiduciary duty to serve a client's needs. *Cf. In re Howard*, 304 Or 193, 743 P2d 719 (1987). There is therefore no reason that a lawyer who is authorized by a client to negotiate a check on a client's behalf cannot do so. On the other hand, a lawyer who has not been so authorized cannot do so. *Cf. Application of Bernath*, 327 Or 422, 429,

962 P2d 685 (1998); *In re Magar*, 312 Or 139, 141, 817 P2d 289, 829 (1991); *In re Boothe*, 303 Or 643, 651, 740 P2d 785 (1987); *In re Sassor*, 299 Or 720, 727, 705 P2d 736 (1985). Although it is theoretically possible that authority to negotiate a check could be implied in specific or extreme circumstances involving haste, distance, inaccessibility of parties, and a course of dealing, these circumstances are rare. *Cf.* C. S. Patrinelis, Annotation, *Authority of Agent to Indorse and Transfer Commercial Paper*, 37 ALR2d 453, 491 (1954) (supplemented periodically).

Approved by Board of Governors, August 2005.

COMMENT: For additional information on this general topic and related subjects, see *The Ethical Oregon Lawyer* § 12.3-7(a) (receipt of client funds and payment to clients) (OSB Legal Pubs 2015); *Restatement (Third) of the Law Governing Lawyers* §§ 26–27 (2000) (supplemented periodically); and ABA Model RPC 1.2(a) cmt [1]. *See also* OSB Formal Ethics Op No 2005-33 (whether lawyer may settle appeal if client cannot be located); OSB Formal Ethics Op No 2005-54 (lawyer’s right to switch between contingency fee and hourly fee if client rejects what lawyer considers reasonable offer).