

FORMAL OPINION NO 2005-39

[REVISED 2014]

Lawyer as Pro Tem Judge

Facts:

Lawyer *A* and Lawyer *B* are partners. Lawyer *B* is occasionally asked to serve as a pro tem judge or hearing officer. Both Lawyer *A* and Lawyer *B* would like to continue representing clients with matters pending before other judges or hearing officers of the same court or body for which Lawyer *B* acts on a pro tem basis.

Questions:

1. May Lawyer *A* and Lawyer *B* do so?
2. What special disclosure and consent requirements, if any, apply in such circumstances?

Conclusions:

1. Yes, qualified.
2. See discussion.

Discussion:

Pursuant to Oregon RPC 3.5(a), a lawyer shall not “seek to influence a judge, juror, prospective juror or other official by means prohibited by law.” There is no indication on the facts presented above, however, that such conduct is intended or is likely to occur.

Similarly, there is no particular reason to believe that there will be a violation of either Oregon RPC 1.12(a)¹ or Oregon RPC 1.11(d).²

¹ Oregon RPC 1.12(a) provides:

Except as stated in paragraph (d) and Rule 2.4(b), a lawyer shall not represent anyone in connection with a matter in which the lawyer participated personally and substantially as a judge or other adjudicative officer or law clerk to such a person or as an arbitrator,

Lawyer *A* and Lawyer *B* may proceed as planned if they do not violate these rules.

With respect to disclosure and consent requirements, Oregon RPC 1.7(a)(2) provides that a current conflict of interest exists if

there is a significant risk that the representation of one or more clients will be materially limited by the lawyer's responsibilities to another client, a former client or a third person or by a personal interest of the lawyer.

On these facts, there is no reason to believe that the representation of any of Lawyer *A*'s or Lawyer *B*'s clients will be materially limited by Lawyer *B*'s obligations as a pro tem judge. Accordingly, it is not necessary for Lawyer *A* or Lawyer *B* to make special disclosure to, or obtain consent from, their clients. *Cf. In re Zafiratos*, 259 Or 276, 486 P2d 550 (1971) (lawyer disciplined for bringing civil action for property damage arising out of motor vehicle collision when accused had acted as judge in related proceeding); *In re Lemery*, 7 DB Rptr 125 (1993) (former district attorney disciplined for representing private client

mediator or other third-party neutral, unless all parties to the proceeding give informed consent, confirmed in writing.

² Oregon RPC 1.11(d) provides:

Except as law may otherwise expressly permit, a lawyer currently serving as a public officer or employee:

(1) is subject to Rules 1.7 and 1.9; and

(2) shall not:

....

(ii) use the lawyer's public position to influence, or attempt to influence, a tribunal to act in favor of the lawyer or of a client. . . .

adversely to state in matter significantly related to matter he worked on while serving as district attorney, without first obtaining state's consent).

Approved by Board of Governors, April 2014.

COMMENT: For additional information on this general topic and related subjects, see *The Ethical Oregon Lawyer* § 15.5-1 to § 15.5-3 (part-time and former judges) (OSB Legal Pubs 2015); *Restatement (Third) of the Law Governing Lawyers* §§ 133, 135 cmt f (2000) (supplemented periodically); and ABA Model RPC 1.11–1.12. See also OSB Formal Ethics Op No 2005-7 (rev 2014); OSB Formal Ethics Op No 2005-38; OSB Formal Ethics Op No 2005-102 (rev 2015).

