

FORMAL OPINION NO 2005-5
Fraudulent or Dishonest Conduct:
Unwitnessed and Telephonic Notarization

Facts:

A notary certificate provides that on a certain day an identified individual personally appeared before the notary and executed the instrument to which the notarial certificate is affixed or acknowledged execution of the same.

Question:

May Lawyer, who happens to be a notary, take notarial acknowledgments over the phone or insist that Lawyer's secretary do so?

Conclusion:

No.

Discussion:

Oregon RPC 8.4(a)(3) makes it professional misconduct for a lawyer to "engage in conduct involving dishonesty, fraud, deceit or misrepresentation that reflects adversely on the lawyer's fitness to practice law." See also Oregon RPC 3.3(a)(3), which prohibits a lawyer from knowingly offering evidence that the lawyer knows to be false, and Oregon RPC 3.3(a)(5), which prohibits a lawyer from engaging in "illegal conduct."¹

The above-described conduct would clearly violate Oregon RPC 8.4(a)(3) and would, if offered as evidence, violate Oregon RPC 3.3(a)(3) and (a)(5). *Cf. In re Morin*, 319 Or 547, 878 P2d 393 (1994); *In re*

¹ Notarial acts are governed by ORS chapter 194. Violation of a statute is "illegal" conduct. *In re Hockett*, 303 Or 150, 734 P2d 877 (1987).

Formal Opinion No 2005-5

Hawkins, 305 Or 319, 751 P2d 780 (1988); *In re Kraus*, 289 Or 661, 616 P2d 1173 (1980); *In re Scott*, 255 Or 77, 464 P2d 318 (1970).

Approved by Board of Governors, August 2005.

COMMENT: For additional information on this general topic and other related topics, see *The Ethical Oregon Lawyer* § 8.4-3 (presentation of evidence), § 21.3-2(a) (prohibition against misleading conduct) (OSB Legal Pubs 2015).