

FORMAL OPINION NO 2005-51

[REVISED 2021]

**Conflicts of Interest, Current Clients:
Lawyer Membership in Trade Association
Represented by Lawyer**

Facts:

Lawyer represents Trade Association. Trade Association asks Lawyer to become an associate member.

Question:

May Lawyer become an associate member?

Conclusion:

Yes, qualified.

Discussion:

Absent some reason to believe that Lawyer's joining Trade Association would violate any of the following rules, there is no reason why Lawyer may not join.

Lawyer should consider whether Lawyer's representation of Trade Association will be materially limited by Lawyer's personal interest as an associate member. Oregon RPC 1.7(a)(2) provides:

(a) Except as provided in paragraph (b), a lawyer shall not represent a client if the representation involves a current conflict of interest. A current conflict of interest exists if:

....

(2) 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. . . .

If Lawyer's personal interest is materially limited, Lawyer may continue to represent Trade Association only with Trade Association's informed consent, confirmed in writing as required by Oregon RPC 1.7(b).

Lawyer should also consider whether joining Trade Association would potentially allow Trade Association to direct or regulate Lawyer's professional judgment. Oregon RPC 5.4(c) 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.

If Lawyer believes that Lawyer's associate membership with Trade Association would direct or regulate Lawyer's professional judgment, Lawyer should decline the membership.

Lawyer should also consider whether Lawyer's associate membership confers a benefit upon Trade Organization in exchange for recommending Lawyer's services. Oregon RPC 7.2(b) provides:

(b) A lawyer shall not give anything of value to a person for recommending the lawyer's services except that a lawyer may

(1) pay the reasonable costs of advertisements or communications permitted by this Rule;

(2) pay the usual charges of a legal service plan or a not-for-profit lawyer referral service;

(3) pay for a law practice in accordance with Rule 1.17; and

(4) give nominal gifts as an expression of appreciation that are neither intended nor reasonably expected to be a form of compensation for recommending a lawyer's services.

If Lawyer's associate membership confers a benefit upon Trade Organization through Lawyer's goodwill in exchange for recommending Lawyer's services, Lawyer would violate Oregon RPC 7.2(b).

Approved by Board of Governors, February 2021.

COMMENT: For more information on this general topic and related subjects, see *The Ethical Oregon Lawyer* § 5.3-1 to § 5.3-2 (identifying the client in corporate and trade-association contexts), § 5.4 (the no-contact rule in the organizational setting), § 10.2-2(a) to § 10.2-2(b) (waivable and nonwaivable conflicts) (OSB Legal Pubs 2015); *Restatement (Third) of the Law Governing Lawyers* §§ 14 cmt f, 121 cmt d, 131, 135 (2000); ABA Model RPC 5.4(c); and ABA Model RPC 7.2(a).