

FORMAL OPINION NO 2005-57

Conflicts of Interest, Current Clients: Government Lawyers, Support Enforcement Division

Facts:

Lawyer, who is employed by a County District Attorney's Office or by the Department of Justice, begins support-enforcement proceedings against Former Husband. During the course of the enforcement proceedings, Former Wife asks Lawyer to take certain actions that are contrary to Lawyer's own best judgment.

Question:

Must Lawyer do as Former Wife requests?

Conclusion:

No, qualified.

Discussion:

The statutory basis for the Support Enforcement Division of the Department of Justice is set forth in ORS 180.340. See also ORS 25.080, regarding the respective roles of Division lawyers and lawyers who work for a county district attorney's office. In such support-enforcement proceedings, the "client" is the State of Oregon and not Former Wife or Former Husband. Consequently, Lawyer owes no duty to Former Wife of a type that would normally be owed to a client. *Cf.* OSB Formal Ethics Op No 2005-26 (lawyer's fiduciary duty to client); *In re Harrington*, 301 Or 18, 718 P2d 725 (1986) (noting that *former* DR 5-105 does not apply unless lawyer has multiple clients whose interests are in conflict). *See also* ORS 25.080(2).

ORS 25.080(4) contains certain limitations on the conduct of such proceedings by government lawyers. Those limitations must, of course, be observed. *Cf.* Oregon RPC 1.2(a) ("a lawyer shall abide by a client's decisions concerning the objectives of representation and, as required by Rule 1.4, shall consult with the client as to the means by which they are

to be pursued”); Oregon RPC 3.3(a)(5) (a lawyer shall not “knowingly . . . engage in . . . illegal conduct or conduct contrary to these Rules”).

Approved by Board of Governors, August 2005.

COMMENT: For additional information on this general topic and related subjects, see *The Ethical Oregon Lawyer* § 10.2 (multiple-client conflicts rules), § 11.4-1 (client identification for a government lawyer) (OSB Legal Pubs 2015); *Restatement (Third) of the Law Governing Lawyers* §§ 99 cmt, 121 *et seq.* (2000) (supplemented periodically); and ABA Model RPC 1.2.