FORMAL OPINION NO 2005-66
Conflicts of Interest, Current Clients:
Legal Aid Society

Facts:

Lawyer A, who serves on the Legal Aid Society’s Board of Directors, proposes to represent a client in a proceeding in which the opposing party would be represented by Lawyer B, a Legal Aid Society employee.

Question:

May Lawyer A and Lawyer B represent their respective clients as proposed?

Conclusion:

Yes, qualified.

Discussion:

Oregon RPC 6.3 provides:

A lawyer may serve as a director, officer or member of a legal services organization, apart from the law firm in which the lawyer practices, notwithstanding that the organization serves persons having interests adverse to a client of the lawyer. The lawyer shall not knowingly participate in a decision or action of the organization:

(a) if participating in the decision or action would be incompatible with the lawyer’s obligations to a client under Rule 1.7; or

(b) where the decision or action could have a material adverse effect on the representation of a client of the organization whose interests are adverse to a client of the lawyer’s.

Oregon RPC 1.7 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:
(1) the representation of one client will be directly adverse to another client;

(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; or

(3) the lawyer is related to another lawyer, as parent, child, sibling, spouse or domestic partner, in a matter adverse to a person whom the lawyer knows is represented by the other lawyer in the same matter.

(b) Notwithstanding the existence of a current conflict of interest under paragraph (a), a lawyer may represent a client if:

(1) the lawyer reasonably believes that the lawyer will be able to provide competent and diligent representation to each affected client;

(2) the representation is not prohibited by law;

(3) the representation does not obligate the lawyer to contend for something on behalf of one client that the lawyer has a duty to oppose on behalf of another client; and

(4) each affected client gives informed consent, confirmed in writing.

In the ordinary case, it is not likely that Lawyer A’s responsibilities as a board member of the Legal Aid Society will materially limit Lawyer A’s representation of the client within the meaning of Oregon RPC 1.7(a)(2). It is also not likely, in the ordinary case, that Lawyer B’s representation of the Legal Aid client will be limited by Lawyer B’s responsibilities to members of the Legal Aid Society board of directors within the meaning of Oregon RPC 1.7(a)(2). If there were such a limitation, however, the lawyers could proceed if the affected client gave informed consent, confirmed in writing as required by Oregon RPC 1.7(b). Lawyer A also must be mindful of the obligation under Oregon RPC 6.3(b) not to participate in board decisions that could have a material adverse effect on Lawyer B’s representation of the Legal Aid client in the matter.
As long as the conditions set forth in these rules are met, Lawyer A and Lawyer B may proceed as proposed.

Approved by Board of Governors, August 2005.

COMMENT: For additional information on this general topic and related subjects, see *The Ethical Oregon Lawyer* § 3.5-3 (payment of fees by nonclients), § 9.2-1 (Oregon RPC 1.7(a)(2)), § 9.2-2 (exceptions to Oregon RPC 1.7(a)(2)), § 20.1 (conflicts-waiver letters) (OSB Legal Pubs 2015); *Restatement (Third) of the Law Governing Lawyers* §§ 134, 135 & cmt e (2000) (supplemented periodically); ABA Model RPC 1.8(f); ABA Model RPC 6.3; and ABA Model RPC 6.5.

2016 Revision