

FORMAL OPINION NO 2005-75

Financial Relations between Lawyer and Judge

Facts:

Lawyer *A* proposes to enter into a contract with Judge *B* pursuant to which Judge *B* will regularly use a private airplane owned by Lawyer *A*.

Lawyer *C* proposes to purchase a vacation home with Judge *D*.

Question:

Are the proposed arrangements ethical?

Conclusion:

See discussion.

Discussion:

Oregon RPC 3.5(a) provides that a lawyer shall not “seek to influence a judge . . . by means prohibited by law.”

Oregon RPC 8.4 provides, in pertinent part:

(a) It is professional misconduct for a lawyer to:

....

(6) knowingly assist a judge or judicial officer in conduct that is a violation of applicable rules of judicial conduct or other law.

Oregon Judicial Rule (JR) 3-103 provides:

A judge shall not directly or indirectly accept gifts, bequests, favors or loans from anyone, except that a judge may accept:

....

(B) ordinary social hospitality; gifts, bequests, favors or loans from relatives; gifts from friends for wedding, birthday or other personal occasions; loans from lending institutions in the regular course of business on terms generally available to persons who are not judges; or scholarships, fellowships or grants awarded on terms applied to other applicants;

(C) any other gift, bequest, favor or loan only if the donor is not a party or other person whose interests have come or are likely to come before the judge.

On the facts presented, it is not clear whether a violation of Oregon RPC 8.4(a)(5) exists. If the transaction proposed by Lawyer A is in the nature of a gift to Judge B, and Lawyer A has interests that are likely to come before Judge B, then the transaction appears to violate JR 3-103(B) and Lawyer A would violate Oregon RPC 8.4(a)(5) in making the gift. In contrast, Lawyer C's proposal to acquire real property jointly with Judge D would not, absent additional facts, constitute a gift or favor and thus would not implicate JR 3-103 regardless of whether Lawyer C has interests that are likely to come before Judge D.

Even in the absence of a gift or favor, judges may not allow family, social, or other relationships to influence judicial conduct or judgment. JR 1-101(E). If the lawyers use the transactions in a manner intended or reasonably expected to obtain a benefit in an appearance before the judges, there would be a violation of Oregon RPC 3.5(a) and Oregon RPC 8.4(a)(4). Moreover, JR 2-106(A) requires disqualification of a judge in any proceeding in which the judge's impartiality reasonably may be questioned. Engaging in private contracts with lawyers at the same time as presiding over legal matters in which the lawyers are involved would reasonably call into question the impartiality of the judges, in which case there would be a violation of both the JRs and the Oregon RPCs.

Approved by Board of Governors, August 2005.

COMMENT: For additional information on this topic and other related subjects, see *The Ethical Oregon Lawyer* § 15.7 (community and personal relationships), § 15.7-1 (relationships between lawyers and judges) (OSB Legal Pubs 2015); *Restatement (Third) of the Law Governing Lawyers* § 113 (2000) (supplemented periodically); ABA Model RPC 3.5(a); and ABA Model RPC 8.4(d)–(f). *See also* OSB Formal Ethics Op No 2005-56. *Cf. In re Sisemore*, 271 Or 743, 534 P2d 167 (1975).