

FORMAL OPINION NO 2005-79

[REVISED 2018]

**Information about Legal Services:
Providing Legal Services to Church Members
or on Behalf of Church-Related Causes**

Facts:

Lawyer is asked to enter into a prepaid legal-services plan to be organized by Church, which Church would make available to its members. The plan will be in full compliance with the applicable statutes set forth in ORS 750.505 to 750.715.

Lawyer is also asked by Church to undertake various representations on behalf of non-Church members in support of issues of interest to Church (e.g., helping to assure that adequate housing and medical services are made available to elderly people). In performing the latter work, Lawyer may be asked to contact potential clients in person or by telephone.

Questions:

1. May Lawyer enter into a prepaid legal-services plan paid for and organized by Church, where lawyer would represent members of Church?
2. May lawyer contact non-Church members as potential clients at the request of Church?

Conclusions:

1. Yes, qualified.
2. Yes, qualified.

Discussion:

1. *Prepaid Legal-Services Plan*

Oregon RPC 7.2 provides, in relevant part:

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

....

(2) pay the usual charges of a legal service plan

Lawyer should be mindful of other potential ethical issues that may arise from representing clients through a prepaid legal-services plan. Oregon RPC 1.8(f) provides

(f) A lawyer shall not accept compensation for representing a client from one other than the client unless:

(1) the client gives informed consent;

(2) there is no interference with the lawyer's independence of professional judgment or with the client-lawyer relationship; and

(3) information related to the representation of a client is protected as required by Rule 1.6.

Oregon RPC 5.4(c) further notes that Lawyer's professional judgment should not be directed or regulated by Church in his or her representation of clients. It provides

(c) 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.

As long as the requirements of Oregon RPC 1.8(f) and Oregon RPC 5.4(c) are met, Lawyer may be paid by Church for representing clients other than Church.

Lawyer should also be careful not to assist a nonlawyer with the unlawful practice of law. Oregon RPC 5.5(a) provides:

(a) A lawyer shall not practice law in a jurisdiction in violation of the regulation of the legal profession in that jurisdiction, or assist another in doing so.

ORS 9.160(1) provides that “a person may not practice law in this state, or represent that the person is qualified to practice law in this state, unless the person is an active member of the Oregon State Bar.”

2. *Contact of Nonmembers of Church*

Oregon RPC 7.3 states:

A lawyer shall not solicit professional employment by any means when:

(a) the lawyer knows or reasonably should know that the physical, emotional or mental state of the subject of the solicitation is such that the person could not exercise reasonable judgment in employing a lawyer;

(b) the person who is the subject of the solicitation has made known to the lawyer a desire not to be solicited by the lawyer; or

(c) the solicitation involves coercion, duress or harassment.

Nothing in the Oregon Rules of Professional Conduct would prevent Lawyer from soliciting employment from nonmembers, provided Lawyer does not employ any of the means prohibited by Oregon RPC 7.3. It does not matter whether a solicitation is made by in-person, telephonic, or other means—all methods of solicitation are governed by the same limitations listed above.

Of course, Lawyer’s communications with any nonmembers about his services must also comply with Oregon RPC 7.1, which provides:

A lawyer shall not make a false or misleading communication about the lawyer or the lawyer’s services. A communication is false or misleading if it contains a material misrepresentation of fact or law, or omits a fact necessary to make the statement considered as a whole not materially misleading.

In addition, Lawyer's communications with nonmembers would be subject to Oregon RPC 7.2¹ to the extent Lawyer advertises his services via a written, recorded, or electronic communication.

Approved by Board of Governors, November 2018.

¹ Oregon RPC 7.2 provides, in part:

(a) Subject to the requirements of Rules 7.1 and 7.3, a lawyer may advertise services through written, recorded or electronic communication, including public media.

....

(c) Any communication made pursuant to this rule shall include the name and contact information of at least one lawyer or law firm responsible for its content.

COMMENT: For additional information on this general topic and other related subjects, see *The Ethical Oregon Lawyer* § 2.4-2 (regulation of time, place, and manner of lawyer advertising), § 2.6-5 (lawyer-referral services, prepaid legal-services plans, and legal-services organizations), § 3.5-3 (payment of fees by nonclients) (OSB Legal Pubs 2015); *Restatement (Third) of the Law Governing Lawyers* § 134 (2000); ABA Model RPC 1.8(f); ABA Model RPC 5.4(c); ABA Model RPC 7.2; and ABA Model RPC 7.3(b) and (d). See also Washington Advisory Op No 1447 (1992); and Washington Advisory Op No 1508 (1992) (Washington advisory opinions are available at <www.wsba.org/resources-and-services/ethics/advisory-opinions>).