

## FORMAL OPINION NO 2021-198

### Unauthorized Practice of Law; Law School Graduates Hired Pending Bar Admission

#### Facts:

A law firm has hired a law school graduate with the expectation that the graduate will sit for the bar and, upon admission to the Oregon State Bar, join the firm as an associate.

Prior to being admitted to the Oregon State Bar, the law firm would like to give the law school graduate work under the supervision of a licensed lawyer in the firm that the firm would ordinarily give to a first-year associate, such as preparing legal memoranda and interviewing witnesses for fact-gathering purposes, while recognizing the unadmitted law school graduate cannot engage in the unauthorized practice of law.

#### Question:

1. May the law firm give the graduate the work it would ordinarily give a first-year associate, as long as that individual is supervised by a licensed attorney and the individual does not engage in the unauthorized practice of law?

#### Conclusion:

1. Yes.

#### Discussion:

Oregon statutes provide that passing a bar examination is required in order to be admitted to the state bar as an Oregon attorney. *See* ORS 9.220; ORS 9.210(2). Accordingly, law school graduates who have not yet been admitted to the bar are not licensed to practice law in the state.<sup>1</sup>

---

<sup>1</sup> This opinion does not address the situation where a law school graduate has been admitted to a bar of another jurisdiction.

Oregon statute and rules prohibit the unauthorized practice of law. ORS 9.160(1) provides: “Except as provided in this section, 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.” *See also* Oregon RPC 5.5(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.”).

Further, lawyers and law firms cannot assist nonattorney law school graduates or non-Oregon attorneys in the unauthorized practice of law. Oregon RPC 5.3; *see also* Oregon RPC 8.4(a)(1) (stating that it “is professional misconduct for a lawyer to . . . violate the Rules of Professional Conduct, knowingly assist or induce another to do so, or do so through the acts of another”).

However, nonlawyers may perform a variety of work if the individual is appropriately supervised. Oregon RPC 5.3 provides:

With respect to a nonlawyer employed or retained, supervised or directed by a lawyer:

(a) a lawyer having direct supervisory authority over the nonlawyer shall make reasonable efforts to ensure that the person’s conduct is compatible with the professional obligations of the lawyer; and

(b) except as provided by Rule 8.4(b), a lawyer shall be responsible for conduct of such a person that would be a violation of the Rules of Professional Conduct if engaged in by a lawyer if:

(1) the lawyer orders or, with the knowledge of the specific conduct, ratifies the conduct involved; or

(2) the lawyer is a partner or has comparable managerial authority in the law firm in which the person is employed, or has direct supervisory authority over the person, and knows of the conduct at a time when its consequences can be avoided or mitigated but fails to take reasonable remedial action.

Under proper supervision, unadmitted law school graduates are permitted to do a substantial variety of work, as long as the graduates do not hold themselves out as lawyers admitted to practice in the jurisdiction. *See* Oregon RPC 5.5(b)(2) (stating that a lawyer may not “hold out to the

public or otherwise represent that the lawyer is admitted to practice law in this jurisdiction”); *see also* Oregon RPC 7.1 (“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.”).

*Proper supervision of nonlawyers*

As to nonlawyers, the Oregon Supreme Court, quoting with approval Opinion 316, Opinions of the Committee on Professional Ethics of the American Bar Association (ABA), 2, stated:

A lawyer can employ . . . nonlawyers to do any task for him except counsel clients about law matters, engage directly in the practice of law, appear in court or appear in formal proceedings [as] part of the judicial process, so long as it is he who takes the work and vouches for it to the client and becomes responsible for it to the client.

*State ex rel. Oregon State Bar v. Lenske*, 284 Or 23, 31 n 4, 584 P2d 759 (1978) (finding, when supervised, a nonlawyer can prepare contracts and affidavits). *See also* OSB Formal Ethics Op No 2005-20 (“A lawyer must supervise and control what is done in the lawyer’s name.”); OSB Formal Ethics Op No 2005-24 (determining that a properly supervised suspended attorney can generally assist a lawyer in performing functions that do not include giving legal advice, as long as the nonlawyer does not share legal fees with the lawyer).

Proper supervision requires making “reasonable efforts to ensure that the person’s conduct is compatible with the professional obligations of the lawyer.” Oregon RPC 5.3(a). The comment to the American Bar Association’s Model Rule 5.3, which is analogous to Oregon’s rule, provides that a supervising attorney “must give [nonlawyers] appropriate instruction and supervision concerning the ethical aspects of their employment . . . and should be responsible for their work product.” ABA Model RPC 5.3, cmt [2]. In addition, the “measures employed in supervising nonlawyers should take account of the fact that they do not have legal training and are not subject to professional discipline.” ABA Model RPC 5.3, cmt [2].

Accordingly, law school graduates may undertake many activities relating to the law, as long as they are undertaken under the proper supervision of a licensed attorney. These activities may include conducting factual and legal research; drafting contracts, affidavits, and legal memoranda; interviewing witnesses and clients for information-gathering purposes; preparing documents for a lawyer’s review and signature; filing executed legal documents; and offering legal conclusions to the attorney or firm. This list is not intended to be exhaustive. However, any other activities must not run afoul of the prohibition against the unauthorized practice of law. *See, e.g., In re Devers*, 328 Or 230, 974 P2d 191 (1999); *In re Morin*, 319 Or 547, 878 P2d 393 (1994); *Oregon State Bar v. Arnold*, 166 Or App 383, 998 P2d 757 (2000), *rev den*, 331 Or 583 (2001); *Oregon State Bar v. Smith*, 149 Or App 171, 942 P2d 793, *rev den*, 326 Or 62 (1997); *Oregon State Bar v. Ortiz*, 77 Or App 532, 713 P2d 1068 (1986). In addition, the graduate, as a nonlawyer, may not receive a share or percentage of the legal fees of a lawyer working on the case. *See* Oregon RPC 5.4(a) (“[a] lawyer or law firm shall not share legal fees with a nonlawyer” except in certain circumstances not material here).

In performing work, the law school graduate is at all times acting for the supervising lawyer in the rendition of legal services, not the client. The licensed supervising attorney must review the law school graduate’s work, and is ultimately responsible for the work product.

*Ensuring that communications are not misleading*

In addition, the lawyer or law firm should take steps to ensure that any of the nonlicensed law school graduate’s communications—including those in the email signature, letter signature block, letterhead, outgoing voicemail message, and other communications—is not false or misleading.

For instance, while admission is pending, law school graduates cannot hold themselves out as attorneys. Oregon RPC 5.5(b)(2); Oregon RPC 7.1. *See also In re Harris*, 366 Or 475, 486, 466 P3d 22 (2020) (“We agree that RPC 5.5(c) does not permit lawyers who are not admitted to the Oregon Bar to hold themselves out or represent themselves as admitted to practice law in this jurisdiction.”); *In re Kumley*, 335 Or 639, 645, 75 P3d 432 (2003) (stating that the word *attorney* conveys that a lawyer is a

member of a bar); OSB Formal Ethics Op No 2005-65 (rev 2015) (concluding nonlawyers may be listed on firm letterhead if the listing does not involve false or misleading communications).

This opinion is consistent with the opinions of other jurisdictions that have considered this issue. *See* Illinois State Bar Assoc, Professional Conduct Advisory Opinion, Op No 20-01 (May 2020) (determining a lawyer or law firm may allow a law school graduate awaiting the bar examination or admission to the bar to perform legal services under appropriate supervision); Iowa State Bar Assoc, Ethics Op No 94-26 (Feb 1995) (same); South Carolina Bar Assoc, Ethics Op No 90-25 (Oct 1990) (same); Pennsylvania Bar Assoc, Formal Ethics Op No 86-97 (May 1987) (delineating the legal tasks that a nonadmitted law school graduate may perform under the supervision of a lawyer).

---

COMMENT: For additional information on this general topic and other related subjects, see *The Ethical Oregon Lawyer* § 1.3 (Oregon statutory law and bar rules), § 2.4-1 (advertising and communications about lawyer), § 2.5-3 (letterhead and professional notices), § 3.5-6(a) (payment to nonlawyers), § 3.5-6(b) (payment to lawyers not licensed in Oregon), § 6.2-3 (confidentiality and privilege), § 11.6 (licensing and multistate practice), § 13.2-2(b) (lawyers in business with nonlawyers), § 13.3-2(a) (lawyer responsibility for subordinates), § 13.3-3 (employment of nonlawyers), § 16.4-4 (errors committed by support staff) (OSB Legal Pubs 2015); *Restatement (Third) of the Law Governing Lawyers* § 4 (2000).