

FORMAL OPINION NO. 2005-79
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 750.505–750.715.

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.

Question:

May Lawyer proceed as proposed?

Conclusion:

Yes, qualified.

Discussion:

Oregon RPC 7.2 provides:

(a) A lawyer may pay the cost of advertisements permitted by these rules and may hire employees or independent contractors to assist as consultants or advisors in marketing a lawyer's or law firm's services. A lawyer shall not otherwise compensate or give anything of value to a person or organization to promote, recommend or secure employment by a client, or as a reward for having made a recommendation resulting in employment by a client, except as permitted by paragraph (c) or Rule 1.17.

(b) A lawyer shall not request or knowingly permit a person or organization to promote, recommend or secure employment by a client through any means that involves false or misleading communications about the lawyer or the lawyer's firm. If a lawyer learns that employment by a client has resulted from false or misleading communications about the lawyer or the lawyer's firm, the lawyer shall so inform the client.

(c) A lawyer or law firm may be recommended, employed or paid by, or cooperate with, a prepaid legal services plan, lawyer referral service, legal service organization or other similar plan, service or organization so long as:

(1) the operation of such plan, service or organization does not result in the lawyer or the lawyer's firm violating Rule 5.4, Rule 5.5, ORS 9.160, or ORS 9.500 through 9.520; and

(2) the recipient of legal services, and not the plan, service or organization, is recognized as the client; and

(3) no condition or restriction on the exercise of any participating lawyer's professional judgment on behalf of a client is imposed by the plan, service or organization; and

(4) such plan, service or organization does not make communications that would violate Rule 7.3 if engaged in by the lawyer.

Absent a violation of this rule, Lawyer may participate in a prepaid legal services plan for the benefit of Church's members.

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;¹

(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.

¹ Oregon RPC 1.0(b) and (g) provide:

(b) "Confirmed in writing," when used in reference to the informed consent of a person, denotes informed consent that is given in writing by the person or a writing that a lawyer promptly transmits to the person confirming an oral informed consent. . . . If it is not feasible to obtain or transmit the writing at the time the person gives informed consent, then the lawyer must obtain or transmit it within a reasonable time thereafter.

. . . .

(g) "Informed consent" denotes the agreement by a person to a proposed course of conduct after the lawyer has communicated adequate information and explanation about the material risks of and reasonably available alternatives to the proposed course of conduct. When informed consent is required by these Rules to be confirmed in writing or to be given in a writing signed by the client, the lawyer shall give and the writing shall reflect a recommendation that the client seek independent legal advice to determine if consent should be given.

Oregon RPC 5.4(c) 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 5.4(c) are met, Lawyer may be paid by Church for representing clients other than Church.

With respect to in-person or telephone solicitation of non-Church members (i.e., persons not within the prepaid legal services plan), Oregon RPC 7.3(d) provides, in pertinent part:

(d) [A] lawyer may participate with a prepaid or group legal service plan operated by an organization not owned or directed by the lawyer that uses in-person or telephone contact to solicit memberships or subscriptions for the plan from persons who are not known to need legal services in a particular matter covered by the plan.

The language of Oregon RPC 7.3(d) generally appears to permit personal contacts in the types of representations at issue. The ability to engage in personal contact is limited, however, by Oregon RPC 7.3(b):

(b) A lawyer shall not solicit professional employment from a prospective client by written, recorded or electronic communication or by in-person, telephone or real-time electronic contact even when not otherwise prohibited by paragraph (a), if:

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

(2) the prospective client has made known to the lawyer a desire not to be solicited by the lawyer; or

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

Approved by Board of Governors, August 2005.

COMMENT: For additional information on this general topic and other related subjects, see THE ETHICAL OREGON LAWYER §§2.13, 2.25–2.26, 2.28, 3.36 (Oregon CLE 2003); RESTATEMENT (THIRD) OF THE LAW GOVERNING LAWYERS §134 (2003); and ABA Model Rules 1.8(f), 5.4(c), 7.2, 7.3(b) and (d). *See also* Washington Informal Ethics Op Nos 1447, 1508 (unpublished).