

FORMAL OPINION NO. 2005-175
Information About Legal Services:
Lawyer Membership in Business Referral Clubs

Facts:

Lawyer has been asked to join the local chapter of a business and professional “networking association” (the Association). According to its published policies, the purpose of the Association is to facilitate the referral of business between members. Attendance at monthly meetings is emphasized and making referrals is a condition of maintaining membership. Members must follow up on referrals received through the Association, although the Association’s rules acknowledge that the formal standards of ethics of a profession supersede any Association rules.

Question:

May Lawyer participate in the activities of the Association?

Conclusion:

No.

Discussion:

Oregon RPC 7.2(a) 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 1.17.¹

¹ Oregon RPC 7.2(c) governs the circumstances under which a lawyer may accept referrals from a prepaid legal services plan, lawyer referral service, legal service organization, or other similar plan, service, or organization. Oregon RPC 1.17(c) governs the sale of a law practice and allows the selling lawyer to recommend the purchasing lawyer if the selling lawyer “has made a reasonable effort to arrive at an informed opinion.”

Oregon RPC 5.4(e) provides:

A lawyer shall not refer a client to a nonlawyer with the understanding that the lawyer will receive a fee, commission, or anything of value in exchange for the referral, but a lawyer may accept gifts in the ordinary course of social or business hospitality.

Participation in the activities of the Association in accordance with its stated policies would violate both of those rules. The stated purpose of the Association is the exchange of business referrals between members. A business referral is a thing of value. If Lawyer commits to refer Lawyer's clients to Association members, then in making the referrals Lawyer is giving something of value in exchange for the other member to promote, recommend, or secure Lawyer's employment. This exchange violates Oregon RPC 7.2(a). OSB Formal Ethics Op No 2005-2 similarly concludes that a lawyer cannot ethically enter into an agreement for reciprocal referrals between a lawyer and a trust company because the quid pro quo nature of the arrangement would violate this rule.

Moreover, if other Association members promise to refer clients to Lawyer, then Lawyer will receive something of value in exchange for making referrals of Lawyer's own clients to other members of the Association. This exchange violates Oregon RPC 5.4(e).²

Business development is a fact of life for modern professionals and the rules of professional conduct do not prohibit participation in groups at which lawyers can network and learn about business opportunities. The problem with participation in the Association described here is not that it, like many civic groups, limits membership to one person in an occupation or profession. The ethical prohibition is against giving or receiving reciprocal referrals. Moreover, substance must rule over form and a lawyer cannot join a group such as the Association on the premise that the rules are suspended for lawyers if, in fact, the referral requirements are a condition of membership.

² This exchange of referrals is generally distinguishable from legal service organizations and similar plans. As noted in footnote 1, Oregon RPC 7.2(c) expressly allows a lawyer or law firm to take part in a prepaid legal services plan, lawyer referral service, legal service organization, or other similar plan, service, or organization. *See, e.g.*, OSB Formal Ethics Op Nos 2005-79, 2005-168. The Association is not one of those allowed plans or services because the Association's referrals are not limited solely to referrals to lawyers.

Even in a group that does not require reciprocal referrals, lawyers must be careful that their follow-up on any referrals received is consistent with the rules of professional conduct. Oregon RPC 7.3(a) provides:

(a) A lawyer shall not by in-person, live telephone or real-time electronic contact solicit professional employment from a prospective client when a significant motive for the lawyer's doing so is the lawyer's pecuniary gain, unless the person contacted:

- (1) is a lawyer; or
- (2) has a family, close personal, or prior professional relationship with the lawyer.

The Association's activities do not fall within any of the exceptions set forth in this rule. Accordingly, even if the networking group does not require reciprocal referrals, Lawyer cannot initiate any personal follow-up on a referral except in writing, unless Lawyer knows that the person making the referral has been expressly authorized by the prospective client to have the lawyer make the personal contact. *See* OSB Formal Ethics Op No 2005-100; *In re Blaylock*, 328 Or 409, 978 P2d 381 (1999) (lawyer did not initiate contact with prospective client when he acted on good-faith belief that third party was conveying prospective client's request for contact). With regard to potential clients who are known to be in need of legal services in a particular matter, see also Oregon RPC 7.3(c) and OSB Formal Ethics Op No 2005-127.

Approved by Board of Governors, August 2005.

COMMENT: For additional information on this general topic and other related subjects, see THE ETHICAL OREGON LAWYER §§2.15, 3.39 (Oregon CLE 2003); RESTATEMENT (THIRD) OF THE LAW GOVERNING LAWYERS §9 (2003); and ABA Model Rules 5.4, 7.2.