

FORMAL OPINION NO 2005-107

Unauthorized Practice of Law: Producing General Legal Information Tapes

Facts:

Lawyer wishes to prepare a series of audiotapes or videotapes providing general legal information that would be sold to the public.

Questions:

1. May Lawyer join with others to prepare and sell such tapes to the public for a profit?
2. May Lawyer's name, office address, and practice emphasis be identified on the tapes or accompanying materials?

Conclusions:

1. Yes.
2. Yes, qualified.

Discussion:

1. *Preparing and Selling the Tapes.*

Producing and marketing general audiotapes and videotapes, albeit about legal subjects, is not the practice of law. *Cf. Oregon State Bar v. Gilchrist*, 272 Or 552, 559, 538 P2d 913 (1975) (marketing and selling of do-it-yourself divorce kits by nonlawyers held not unlawful practice of law); *Oregon State Bar v. Taub*, 190 Or App 280, 78 P3d 114 (2003), *rev den*, 336 Or 534 (2004). *See also* OSB Formal Ethics Op No 2005-101 (rev 2015). Because producing and marketing such tapes is not the

practice of law, there can be no violation of Oregon RPC 5.5(a)¹ or of Oregon RPC 5.4(a) and (b).² These sections thus do not limit Lawyer's ability to join with nonlawyers in producing and marketing the tapes. *See also* OSB Formal Ethics Op No 2005-101 (rev 2015).

2. *Dishonesty, Fraud, Deceit, and Misrepresentation.*

Even though the tapes and materials do not constitute the practice of law, Lawyer must still comply with Oregon RPC 8.4(a)(3), which prohibits "conduct involving dishonesty, fraud, deceit or misrepresentation that reflects adversely on the lawyer's fitness to practice law." *Cf. In re Houchin*, 290 Or 433, 622 P2d 723 (1981); *In re Wyllie*, 327 Or 175, 957 P2d 1222 (1998); *In re Staar*, 324 Or 283, 924 P2d 308 (1996) (fact that lawyer was not acting as lawyer at time of false swearing in petition for family abuse prevention restraining order did not diminish lawyer's culpability). Nothing in these facts would indicate any such dishonest conduct. Merely listing Lawyer's name, office address, and area of practice emphasis should not violate this rule if the listing is accurate.³

¹ Oregon RPC 5.5(a) provides:

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.

² Oregon RPC 5.4(a) and (b) provide:

(a) A lawyer or law firm shall not share legal fees with a nonlawyer. . . .

(b) A lawyer shall not form a partnership with a nonlawyer if any of the activities of the partnership consist of the practice of law.

³ We have not been asked to assume that the tapes are to be used to solicit legal business for Lawyer, and we therefore do not so assume. *Cf. Oregon RPC 7.1–7.5; Oregon RPC 5.4.* For opinions discussing advertising and solicitation issues, see, for example, OSB Formal Ethics Op No 2005-100 (rev 2014), OSB Formal Ethics Op No 2005-58 (rev 2014), OSB Formal Ethics Op No 2005-35 (rev 2015), and OSB Formal Ethics Op No 2005-3 (rev 2014).

Approved by Board of Governors, August 2005.

COMMENT: For additional information on this general topic and other related subjects, see *The Ethical Oregon Lawyer* chapter 2 (marketing, advertising, and solicitation), § 3.5-6(a) (payments to nonlawyers), § 13.2-2(b) (lawyers in business with nonlawyers) (OSB Legal Pubs 2015); *Restatement (Third) of the Law Governing Lawyers* §§ 4, 10 (2000) (supplemented periodically); ABA Model RPC 5.4(a)–(b); ABA Model RPC 5.5(a); and ABA Model RPC 8.4(c). See also Washington Advisory Op No 184 (1990); Washington Advisory Op No 899 (1985); Washington Advisory Op No 1528 (1993); Washington Advisory Op No 1879 (1999); Washington Advisory Op No 2026 (2003). (Washington advisory opinions are available at <www.wsba.org/resources-and-services/ethics/advisory-opinions>.)

