



Alerts

Oregon Bar Issues Formal Opinion on Ethics Issues Arising in Mentoring Relationships and Use of LISTSERVs

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Lawyers for the Profession® Alert

[Oregon Formal Opinion No. 2011-184 \(March 2011\)](#)

Brief Summary

In a Formal (Ethics) Opinion regarding confidentiality of client information and conflicts of interest, the Oregon State Bar Board of Governors clarified certain duties held by lawyers who are in mentoring relationships with lawyers in different law firms. The Opinion also offered guidance to lawyers who participate on email LISTSERVs and other online venues for discussion and advice.

Complete Summary

State bars are beginning to formalize and mandate programs providing new lawyers with mentoring by more experienced members of the bar. The Oregon State Bar is launching a New Lawyer Mentorship Program that will be required for all new lawyers who pass the bar starting in the summer of 2011, Georgia and Utah have adopted similar programs, and other states appear likely to follow.

The formalization of the mentorship process highlights questions regarding what client information can be disclosed by the mentee to the mentor (and vice versa), as well issues pertaining to conflicts of interest. The same or similar questions arise in the use of LISTSERVs and other electronic discussion venues, where “consulting lawyers” frequently ask other lawyers (consulted lawyers) for advice or legal information.

The Oregon Formal Opinion clarified that the consulting lawyer seeking advice from the consulted lawyer who is not in the same law firm must abide by Rule 1.6 and safeguard information relating to the representation of a client and protect against disclosure without the client’s informed consent. Following the American Bar Association’s Standing Committee on Ethics and Professional Responsibility Formal Opinion 98-411, “Ethical Issues in Lawyer-to-Lawyer Consultation,” the Oregon Formal Opinion recognizes that “[c]onsultations that are general in nature and that do not involve disclosure of information relating to the representation of a specific client” and general hypotheticals (so long as the facts do not implicitly identify the client) do not implicate Rule 1.6.

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If there is a danger of disclosing client identity or otherwise protected information, then the lawyer should obtain informed consent from the client, including apprising the client of risks of disclosure including potential waiver of attorney-client privilege. The consulting lawyer also should avoid consulting with lawyers in law firms that are likely to represent the adverse party in the given matter, which is a risk particularly acute in the context of LISTSERVs given the broad range of potential information recipients.

The Formal Opinion states that although the consulted lawyer has certain defined responsibilities towards his/her own client, he/she would not violate any duties to the consulting lawyer's clients by using information received in the course of the mentorship, even when later representing a client adverse to the consulting lawyer's client. If, however, the consulting lawyer relies on the consulted lawyer's advice, and that results in detriment to the consulted lawyer's client, then the consulted lawyer must disclose to his/her own client about the consultation. The Formal Opinion suggests that the consulted attorney could insist on running a conflicts search prior to the discussion or perhaps even seek an agreement that the consultation would not create obligations to that client.

Significance of Opinion

This timely opinion identifies some of the potential ethical risks inherent in mentoring relationships and online discussion or advice venues. The most significant risks identified are the potential threat to protection of client information and the risk of conflicts of interest, either in the moment or arising thereafter. This Opinion provides a straightforward attempt to sort through some of the issues attendant upon the respective responsibilities of mentees and mentors as well as those who regularly use LISTSERVs and other online venues for discussion and advice.

For more information, please contact your regular [Hinshaw](#) attorney.

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