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Old Friends in Familiar Places: OSB Reissues Ethics Opinions

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When the new Rules of Professional Conduct went into effect at the beginning of this year a significant project remained: updating the Oregon State Bar's library of ethics opinions to incorporate the new rules. The OSB has now completed that project. The new ethics opinions have been approved by the OSB's Board of Governors and are now available on its web site at www.osbar.org.

In updating the opinions, the OSB took a very practical approach. It kept the same order as the old set and simply plugged in the new rules and made any appropriate additional changes. In other words, if you are looking for old opinion 1991-1, an updated opinion on the same subject is now available in opinion 2005-1. Under RPC 8.6, opinions approved by the OSB's Board of Governors are called "formal" opinions and those issued by the OSB's Legal Ethics Committee and its General Counsel's Office are called "informal" opinions. In this column, we'll look at some of the primary formal opinions in four areas: conflicts, confidentiality, the no contact with represented parties rule and fee agreements.

Conflicts. Current client conflicts under RPC 1.7 are summarized generally in Formal Opinion 2005-158 and applied using the context of a civil

automobile accident case. 2005-158 provides both a useful example and an analytical framework for deciding whether conflicts exist involving multiple current clients. Formal Opinion 2005-82 plays a similar role in the criminal law context. Formal Opinions 2005-11, 2005-17 and 2005-174, in turn, do the same for former client conflicts under RPC 1.9. When read in concert, these three opinions offer practical advice on parsing former client conflicts arising from both the similarity of matters and the potential need to use a former client's confidential information. Formal Opinions 2005-85 and 2005-122 give guidance on two related areas. 2005-85 deals with an important question that is often a predicate to analyzing conflicts: who is the client in a particular circumstance. 2005-122 discusses the situations in which advance waivers of future conflicts may be appropriate.

Confidentiality. Formal Opinions 2005-23, 2005-110 and 2005-136 all contain general summaries of the confidentiality rule, RPC 1.6. Although each of these opinions is built around a different factual context, they all contain useful summaries of the confidentiality rule along with citations to other related ethics opinions and case law. Several of the exceptions to the confidentiality rule, in turn, are examined in separate opinions: 2005-34 (client perjury); 2005-104 (self-defense); 2005-105 (client criminal activity); and 2005-136 (litigation between the lawyer and the client).

Contacts with Represented Parties. Formal Opinions 2005-6 and 2005-147 outline generally RPC 4.2's "no contact with represented parties" rule.

Formal Opinions 2005-80 and 2005-152, in turn, apply RPC 4.2 in the corporate and governmental context by delineating who is, and is not, a represented party for purposes of the rule.

Fee Agreements. The formal opinions touch on a wide spectrum of fee-related issues under RPC 1.5. Many deal with non-hourly fee arrangements, including the following on, respectively, contingent and fixed/flat fees: contingent—2005-13 (domestic relations), 2005-15 (installments), 2005-54 (conversion to hourly) and 2005-124 (contingent fees generally); and flat/fixed—2005-98 and 2005-151. Formal Opinion 2005-133 discusses fee financing arrangements and Formal Opinion 2005-97 covers modifications of fee agreements. Finally, Formal Opinion 2005-1 outlines withdrawal for nonpayment of fees.

Even within these four areas, the opinions cited here are not exhaustive lists. They illustrate, however, the depth of resources available to lawyers facing questions in these and other areas. There are also search engines on the OSB's web site and in the Casemaker library to help navigate through the 175 formal opinions adopted by the OSB.

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