

## **Policy 5-60 Responding to and Making Oregon State Bar Complaints**

A complaint of professional misconduct to the Oregon State Bar (OSB) is first a matter of concern to the Assistant Attorney General (AAG) involved in receiving or in making such a complaint. However, it is also a matter of concern to the Attorney General and the Department of Justice (DOJ). The purpose of DOJ's policy on OSB complaints is to assist AAGs in determining the proper course of action in responding to a complaint made to the OSB, as well as in making such a complaint with respect to another lawyer. \* \* \* \*

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### **(2) When an AAG determines that a complaint of professional misconduct by another lawyer should be made to the Oregon State Bar**

In some situations, an AAG may determine that Oregon RPC 8.3 compels reporting professional misconduct by another lawyer. Because an AAG is a member of DOJ, however, all AAGs must adhere to the following guidelines.

It is DOJ's policy to not use a complaint of professional misconduct by another lawyer as a litigation tactic in pending matters. Oregon RPC 8.3 does not specify when a complaint of professional misconduct must be made. Hence, DOJ disapproves reporting professional misconduct by opposing counsel or by a lawyer involved as a witness, party, or other participant in a matter during the pendency of the matter, under most circumstances. Thus, generally, an AAG should not report the professional misconduct of opposing counsel or of a lawyer involved as a witness, party, or other participant in a matter, during the pendency of the matter in which the professional misconduct has arisen, unless the AAG first obtains approval from the Attorney General or the Deputy. Similarly, if the matter at issue is on appeal, the AAG should await issuance of the appellate judgment before reporting professional misconduct, unless it is approved by the Attorney General or the Deputy.

Before an AAG reports professional misconduct by another lawyer to the OSB at any time, the AAG is asked to submit a memorandum describing the proposed complaint to the AIC, Division Administrator, Deputy, and Ethics Committee, and to request evaluation of the grounds for the complaint. It is the prerogative of the Attorney General and the Deputy whether to have the AAG submit the complaint, or whether to submit the complaint themselves. Unless the AAG has received express authorization from the Attorney General or the Deputy to report on behalf of DOJ any professional misconduct by another lawyer, a complaint of professional misconduct made by an AAG must state that the complaint is made by the AAG individually as a member of the OSB, and not as an AAG or on behalf of DOJ or the Attorney General. In that case, DOJ letterhead may not be used.

### **(3) Alternatives to reporting professional misconduct by another lawyer**

In some situations, an AAG may consider raising ethics concerns directly with opposing counsel or with the tribunal involved in the matter, if it appears there is a strong likelihood of harm to

the State of Oregon, to the public generally, or to the other lawyer's client. To avoid the risk that the ethics issue is being used as a litigation tactic, however, the AAG is required to solicit the opinion of his or her AIC or Division Administrator, the Deputy, and the Ethics Committee before raising the matter with opposing counsel or with the tribunal.

## **Policy 2-15 Legal Ethics Committee**

### **(1) Nature and Function of the Ethics Committee**

The Ethics Committee advises Department of Justice (DOJ or Department) personnel and the Attorney General about legal ethics and professionalism issues. The Committee's primary functions are:

- (a) to answer legal ethics issues posed by the Attorney General, Executive Staff or an AAG;
  - (b) to identify ethics issues the Attorney General and Executive Staff may want to examine;
  - (c) to draft and revise DOJ ethics opinions for approval by the Executive Staff;
  - (d) to assist the Attorney General with implementation of DOJ Policy 5-60 governing OSB legal ethics complaints filed against an AAG;
  - (e) to prepare recommended requests for Oregon State Bar ethics opinions for approval by the Executive Staff;
  - (f) to prepare recommended comments on draft Oregon State Bar ethics opinions for approval by the Executive Staff;
  - (g) to prepare proposed amendments to the Oregon Rules of Professional Conduct, or proposed comments on amendments submitted by other sources, for approval by the Executive Staff; and
  - (h) to prepare and present Continuing Legal Education legal ethics seminars for DOJ.
- The ethics opinions and ethics policies of the Department establish a minimum standard for ethical conduct. The goal of the Attorney General is for the Department to be the finest public law firm in the nation. The Ethics Committee examines the ethics questions that come before it not merely to ensure minimal compliance with the ethics rules, but to recommend conduct that conforms to the dictates of professionalism, fairness, and the high standards of the Department.

### **(2) Committee Consideration of Ethics Issues**

The Department encourages AAGs to pose ethics issues to the Ethics Committee. Ethics Committee members may give informal advice on ethics matters to AAGs. The protocol for making inquiries to the Ethics Committee can be found in DOJ Policy 2-16.

The Ethics Committee meets at times scheduled by the co-Chairs. The Committee may transact business through in-person meetings, conference calls, email, or any other method deemed

appropriate and feasible by the Committee. The Committee shall keep written records of the actions taken at its meetings. The Committee shall submit all written opinions or proposed policies on ethics issues to the Executive Staff for approval. The Committee also shall submit to the Executive Staff any dissenting opinions that have been timely prepared. Approved ethics opinions will be published and distributed to all AAGs.