

Inside Oregon Ethics: Unsolicited Nonclient E-mail  
Peter R. Jarvis, Esq  
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Your firm has a Web site through which a member of the public can send you e-mail. One day, someone you have never met sends you one. After reading it, you decide that you are interested in the sender's matter. You extract the appropriate names and run a conflicts check, only to find out that the adverse party in this matter is already a client of your firm. In fact, your firm has already been retained to represent this client against the sender. How much trouble are you in, and with whom?

The problem, of course, is that attorney-client privilege covers communications made by a prospective client "who consults a lawyer with a view to obtaining professional legal services from the lawyer." OEC 503(1)(a); see also *The Ethical Oregon Lawyer* § 6.2 (OSB CLE 1991). Thus, a lawyer who allowed the e-mail writer to convey the same information in person could well find herself and her firm disqualified from continuing to represent their existing client.

On the other hand, this result should not apply, and neither the lawyer nor the firm should be disqualified, if the lawyer explains to the prospective client in the initial interview and before any information is disclosed that nothing that may be said will be treated as confidential unless and until a conflicts check has been run. *Id.*

In the e-mail context, there is no opportunity for an in-person warning. Formal Opinion 2001-1 of the Association of the Bar of the City of New York Committee on Professional and Judicial Ethics, [www.abcny.org/eth2001-01.html](http://www.abcny.org/eth2001-01.html), takes the position that in this context, the unsolicited e-mail should not necessarily disqualify the lawyer, because the prospective client has no reasonable expectation that the prospective lawyer does not already represent the adverse party. The opinion also notes, however, that it is a good idea for lawyers with Web sites to make clear that initial e-mail communications will not be regarded as confidential. This is clearly the safer approach.

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If you would like to suggest one or more issues for future topics, please contact me at: Peter Jarvis via e-mail.

About the author: Peter R. Jarvis, Stoel Rives LLP  
(503) 294-9456 e-mail: [prjarvis@stoel.com](mailto:prjarvis@stoel.com) An ethics article by attorney Peter R. Jarvis appears each month in the Oregon Law Journal . Peter gives advice to and represents lawyers who have matters of discipline before the Oregon State Bar. E-mail your questions directly to Peter R. Jarvis. Prior articles by Peter can be seen by going to the Archives navigation button on the left, above.