

Inside Oregon Ethics:
Loose Lips Sink Ethical Ships!
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September 2001

When the Oregon Supreme Court sneezes, all of us may catch cold. So it is with *In re Wyllie*, 331 Or 606, 19 P3d 338 (2001). On its facts, the case is unexceptional and the ultimate holdings are clearly correct.

On the other hand, the opinion also asserts:

"We turn to whether the accused violated the rules against current client conflicts when he undertook to provide the defendants with advice about whether they should plead no contest. This court has explained that a lawyer who is asked to represent multiple clients who have potentially differing interests must weigh carefully the possibility of impaired judgment or divided loyalty and that employment should be refused if there is the slightest doubt about whether the employment will involve a conflict of interest. See *In re O'Neal*, 297 Or 258, 264, 683 P2d 1352 (1984) (so stating and citing authorities). A conflict exists when a lawyer is in a position where the exercise of the lawyer's independent professional judgment on behalf of one client would be adversely affected by the differing interests of the other clients. *In re Porter*, 283 Or 517, 524, 584 P2d 744 (1978)." 331 Or at 616.

As a statement of what the law was, this passage is unexceptional. As a statement of what the law is, it is extraordinary.

Both *O'Neal* and *Porter* predate the Oregon Supreme Court's 1988 adoption of new current client conflicts rules with formally codified "actual" (i.e., nonwaivable) and "likely" (i.e., waiveable) conflicts standards. See, e.g., DR 5-105(A)(1), (2). The "slightest doubt" language is just plain wrong. More than a "slightest doubt" will necessarily exist in many likely conflict-of-interest situations. Indeed, that was one of the critical points of the 1988 amendments. The subjective "exercise of independent professional judgment" language was also expressly eliminated from DR 5-105 analysis by the 1988 amendments in favor of an objective standard. See, e.g., *The Ethical Oregon Lawyer* § 12.8 (Oregon CLE 1991).

It is difficult enough for lawyers to follow the increasing array of novel interpretations of our ethical rules. It is more difficult still when those rules are misdescribed. Oregon already has conflict-of-interest rules that are at least as severe, and as severely enforced, as any American jurisdiction.

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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.

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(503) 294-9456 e-mail: 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.