

Inside Oregon Ethics: The DRs and the RPCs:  
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The Oregon State Bar is beginning to consider the general replacement of the present Oregon Disciplinary Rules (the "DRs") by the subsequently drafted ABA Model Rules of Professional Conduct (the "RPCs"). I support this.

### 1. The Need To Keep Up with the Rest of the Country.

When Oregon first considered and rejected the RPCs in 1983 (and instead incorporated several of the RPC provisions into the DRs), only a handful of states had adopted them. By contrast, roughly 40 states have now done so, including both Washington and Idaho-the two states with whom Oregon has a reciprocal admission agreement.

Adoption of the RPC format will simplify the lives of Oregon lawyers in much the same way that we benefit from having a largely, if not entirely, Uniform Commercial Code. It will also make non-Oregon CLEs with ethics components more intelligible to Oregon lawyers and will make it easier for Oregon lawyers to research ethics issues. Over time, Oregon clients will benefit too.

### 2. The Need To Curb Potential Disciplinary Excesses.

In recent years, Oregon has repeatedly inflicted greater sanctions on lawyers than other states and has sanctioned lawyers for conduct that would not be sanctioned in other states. The purpose of lawyer discipline is protection of the public, but more discipline does not always mean more protection. The establishment of an RPC-based system would tend to curb some of the excesses with which we may otherwise be confronted.

### 3. Choosing Specific Rules.

This does not mean, however, that we should adopt every RPC exactly as written. In the space that follows, I would like to review those instances in which I would not recommend that the RPCs be adopted.

- Most states, including Oregon, allow lawyers to reveal information necessary to stop a client from committing any future crime. The RPC position is more limited. We should continue to stand with the majority of the states on this issue.
- Oregon has a more developed advertising rule. In fact,
- DR 2-101 could be said to be an elaboration of RPC 7.1. Although some tinkering may be appropriate, I recommend against disturbing the overall balance that we reached in
- DR 2-101.
- I favor keeping our no-sex-with-clients rule.
- We should also keep our screening rule for all lawyers who change jobs.
- The issue of current-client conflicts is a potential can of worms. Although there are improvements that we could make to our present rule-for example, the substitution of

"nonwaivable" for "actual" and "waivable" for "likely" (since this is what these words mean in a current?client context)-we should probably duck any further battles at this time. For the same reasons, I would retain our definition of "full disclosure."

- A related issue concerns the distinction between mediators under DR 5?106 and intermediaries under RPC 2.2. RPC 2.2 is a peculiar rule. Unless we tackle the current?client conflicts issue, we should let this one pass too.

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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.