

Inside Oregon Ethics: If It Is Broke, Fix It (Part 1)
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When someone files a complaint against an Oregon lawyer with the Oregon State Bar, disciplinary counsel will begin by reviewing the complaint to see if, on its face, it appears to raise an ethics issue. If it does, the lawyer will be sent a copy of the complaint and be asked to respond in writing. The lawyer's response is sent to the complainant, who is asked if he or she wishes to make any further comments. Those comments, if any, are then sent to the complaining lawyer—and so it goes until everyone has more or less said whatever he or she wishes to say.

In many situations, this letter-writing process clarifies all material facts, and a decision to dismiss or to pursue an admonition or formal discipline can be made without additional work. In other situations, however, the facts are unclear or turn on issues of credibility that require investigation.

The investigatory work is supposed to be the job of the Local Professional Responsibility Committees, or LPRCs, that exist throughout the state. LPRCs are composed of volunteer lawyers and nonlawyers whose job it is, upon request by disciplinary counsel, to conduct investigations and write reports. The Bar is in no sense bound by what are called the findings of fact or conclusions of law reached by the LPRC, however, and the quality of the work performed by LPRCs regularly varies from extremely high to extremely poor. In addition, and because this is volunteer work, it often seems to be left at the bottom of the pile, with the result that the time to complete an LPRC investigation often seems to stretch to a year or more. This is bad for lawyers who have done nothing wrong and wish to be cleared, bad for complainants who become cynical as time passes while nothing is done, and bad for the legal system.

There's no need to take my word for this. The Bar has formally acknowledged its problems with LPRCs. In addition, several different disciplinary counsel have told me that as a result of difficulties in working with LPRCs, they often do their own investigations instead. Since, however, disciplinary counsel have full workloads, this slows down the system. It also means that the Bar is, collectively speaking, paying disciplinary-lawyer rates for investigatory work that could almost certainly be performed less expensively by nonlawyer investigators.

So what's the solution? At least in the more populous areas of the state, the Bar should hire part-time or full-time investigators who could, among other things, be terminated if they took too long or made too many mistakes. If attorney discipline is as important as we are regularly told that it is, this critical stage should not be left to well-meaning but too often ineffective volunteers.

End of article (Part I)...../

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.