

Inside Oregon Ethics: If It's Broke, Fix It: Part II
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The Oregon Tax Court exists to decide disputes between taxpayers on the one hand and state and local governments on the other. Its reasoned decisions are intended to and do allow taxpayers and government officials to plan for the future. These decisions also reduce what would otherwise be a crushing burden on the Oregon Supreme Court.

Imagine what would happen if the Oregon Tax Court were replaced by rotating panels consisting of two volunteer taxpayers and one volunteer nontaxpayer. The result would be chaos. Even if the decisions of these panels could be relied upon to be correct, they would have little value as analytical or planning tools, and the appellate caseload would increase accordingly.

It is sad but true that Oregon's present attorney disciplinary system is far closer to the volunteer taxpayer/nontaxpayer model than to the Oregon Tax Court model. Two months ago, I asserted in this column that the voluntary and too often inadequate investigatory efforts of the Local Professional Responsibility Committees or LPRCs should be replaced by paid investigators. The point of this column is that the same holds true for the disciplinary decisionmakers. It is time for us to establish either an independent Bar Court or some sort of limited hearings panel with a small enough group of paid and repeating hearings officers that they can truly "own" the process and write meaningful disciplinary opinions to guide Oregon lawyers while taking the realities of practice into account.

I do not question the good faith of Oregon's past and present volunteer trial panel members any more than I previously questioned the good faith of the volunteer LPRC members. My points are two: first, "legal ethics" as a field is far more complex than it was ten or twenty or thirty years ago, and it therefore needs greater expertise in decisionmaking; second, both accused attorneys and bar disciplinarians would benefit from the independent rigor that such a change would bring. And just as I stated in my prior column that I thought most of our bar disciplinarians would approve a switch to paid investigators, I firmly believe that most of our bar disciplinarians would approve this change too.

Such a change would also be likely to allow the Supreme Court to reduce the time that it devotes to attorney disciplinary decisions. From everything I have heard, the Court is already concerned that it spends too much time on attorney disciplinary matters, and the growth over the decades in the number of attorneys (and therefore in the number of attorneys subject to discipline) is likely to make this problem even more acute in the future than it presently is. The Court's present members did not embark on judicial careers in the hopes of becoming the regulators of last resort for Oregon's attorneys, and bar members would, in my opinion, be more likely to get a fair shake from a Bar Court or a dedicated group of independent hearings officers whose job it is to deal with the full range of legal ethics issues than from court members whose primary interests are elsewhere.

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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. Other articles by Peter can be seen on the member's Archives pages.