

Inside Oregon Ethics: If It's Broke, Fix It: Part III
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Many Oregon lawyers are upset with Bar discipline. I doubt that there is much upset when the Bar goes after trust account abusers, perjurers or others who commit clearly established wrongs. I think that the upset comes primarily from a feeling that the Bar seems to be on a perpetual crusade to come up with new and previously unknown interpretations of "existing" rules which are then applied to hapless lawyers on what amounts to an ex post facto basis. I believe that this upset is substantially justified.

Consider, by contrast, what would happen if the Bar were more of a typical administrative agency. Before it could prosecute individuals under what are effectively new rules, it would have to run those rules through a notice and comment process. Anything else would be a Due Process violation.

Not so with the Bar. Wholly new interpretations can and do emerge from Bar counsel without any meaningful opportunity for general input. In fact, the first that most attorneys ever get to hear about such new developments is after not only a trial panel but also the Oregon Supreme Court has acted.

Do things have to be this way? Of course not. Nothing in our present Bar rules stops the Bar from seeking input from beyond the State Professional Responsibility Board before it ventures into new territory. Similarly, nothing in our present Bar rules prohibits the Bar from publishing information on the positions it is taking or proposing to take in the cases pending before trial panels or on appeal so that interested and knowledgeable attorneys can be heard.

Such changes could easily be implemented and would help to dispel the appearance that a near-bunker mentality has taken hold of Lake Oswego. They will only come about, however, if both Bar disciplinarians and the Oregon Supreme Court first decide that open and constructive dialogue at all levels of the system should be more of a priority than devising new ways to pile sanctions upon sanctions. Working lawyers whose job is to protect the public every day of their professional lives should expect and accept no less.

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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.