

American Legal Ethics: Two Views of Professionalism  
Peter R. Jarvis, Chair of the Stoel Rives Professional Responsibility practice group  
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It may well be that the majority of state bars have now adopted voluntary codes or creeds of professionalism. Are they worth the paper they are printed on? It depends on how you look at them. Some of these codes or creeds tend to denigrate the binding ethical rules with which attorneys must comply. This is a bad thing for several reasons.

First, it may inadvertently suggest that the level of conduct required by the binding rules is lower than it actually is.

Second, and more importantly, it may suggest that in some or all close cases, attorneys are entitled to substitute their own personal judgment for that of their clients even though what the clients may want the lawyer to do is, as is often said, within the bounds of the law.

Let's be clear: it is always OK for a lawyer to argue with his or her client about the moral as well as the legal consequences of a client's decisions. At the end of the day, however, the matter or case belongs to the client and the key calls are for the client to make. Or put another way, a lawyer who wishes from the beginning to give a client less than the client is due under the law must either tell the client as much up front, so that the client can choose to go elsewhere, or be guilty of misrepresentation to the client.

To paraphrase Harry Truman, if you can't stand the heat, find another kitchen. But there are also other ways in which I believe the codes or creeds are very helpful. First, they serve to remind many of us why we went to law school to begin with. Second, they remind us as well that one of the best things that we can do not only for ourselves and for "the system" but also for our clients is to step back, take a deep breath and look at the big picture before taking precipitous action. When we get too personally involved, when we don't adequately explore reasonable alternatives to "scorched earth" tactics and when we insist as a matter of personal pride on the escalation rather than the de-escalation of conflicts, we disserve our clients' interests.

Similarly, and even though we are their agents, we may well disserve our clients' interests when we do not attempt to check the excesses that originate with them. As I wrote some time back, fighting fire with fire is dramatic, but fighting fire with a fire extinguisher may be more productive. And fighting fire with fire proofing may be better still.

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About the author: Peter R. Jarvis, Stoel Rives LLP- (503) 294-9456,  
e-mail: prjarvis@stoel.com ; B.A., Harvard University (1972); M.A. (economics), J.D., Yale University (1976); member of the Oregon, Washington and California Bars; partner, Stoel Rives LLP, Portland; former member, Oregon State Bar Legal Ethics Committee, Washington State Bar Rules of Professional Conduct Committee; Chair of the Stoel Rives Professional Responsibility practice group. Mr. Jarvis is a frequent writer and speaker on legal ethics issues, and his practice includes advising attorneys with legal ethics questions and defending attorneys

accused of legal ethics violations. He is a member of the American Law Institute and is also this year's Chair of the ABA Center for Professional Responsibility Conference Planning Committee. In 1993, Mr. Jarvis received the Harrison Tweed Special Merit Award from ALI-ABA for his ethics CLE work.

If you would like to suggest one or more issues for future topics, please contact me at: Peter Jarvis via e-mail.

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.