

January 2014 *Multnomah Lawyer Ethics Focus*

A Conversation with New OSB Disciplinary Counsel John Gleason

**By Mark J. Fucile
Fucile & Reising LLP**

I recently sat down for breakfast with John Gleason, the Oregon State Bar's new Disciplinary Counsel. By way of background, John came to Oregon following a distinguished 25 year career in lawyer regulation in Colorado—including 14 years as Regulatory Counsel for the Colorado Supreme Court. John was recognized by the ABA's Center for Professional Responsibility this past year for his innovative work in Colorado. Before getting into lawyer regulation, John was in private practice in the Denver area and spent time as a homicide detective and on a bomb squad before going to law school.

In addition to his experience in Colorado, John is an active member in many national organizations that touch on client protection and lawyer regulation. He is also a frequent member of consultant teams for state lawyer and judicial regulatory systems throughout the country.

John comes to Oregon at an interesting point in lawyer regulation here. Oregon's current regulatory template was adopted in 1984 and his predecessor directed the OSB Disciplinary Counsel's office for almost that long. Although the rules governing the regulatory system have been amended piecemeal over time, the demographics of the membership and the nature of law practice have both changed dramatically since then. Looking at numbers alone, with roughly 15,000

members, the Oregon State Bar today is over twice the size it was when the current regulatory framework was adopted 30 years ago.

The regulatory process should be of more than passing interest to all Oregon lawyers. For 2012, the last year for which complete statistics are available, the Oregon State Bar received approximately 2,000 complaints—or, over 1 for every 10 Oregon lawyers. For the same period, the disciplinary system also cost over \$2 million—principally from bar dues.

Both my questions and John's answers have been edited (by both of us) to fit conveniently into this space.

What brought you to Oregon?

I had been considering retiring after 25 years with the Court in Colorado. The position here in Oregon was open and I knew and respected OSB Executive Director Sylvia Stevens. I looked at the system here and the rules and was optimistic that I could do some positive things.

What are your initial impressions of Oregon practice?

Oregon has a very collegial bar. I have been traveling all over the state meeting lawyers. I like them a lot. The bar here is smaller than in Colorado, but it has many of the same general characteristics statewide.

How does the regulatory system here compare with Colorado?

Oregon looks like Colorado did in 1997 before we began a series of changes. The complaints I have heard about the Oregon system is that it is slow

and that it is ineffective in dealing with serious matters and recidivists. In Colorado, we focused resources at two main points in the system. First, we created a centralized telephone intake with the authority to resolve many problems up front. Second, we devoted most of our prosecution resources to serious matters and recidivists.

How did you deal with repeat offenders (assuming the violations were comparatively minor)?

What we found in Colorado is that lawyers who are having a problem rarely have just one problem. We need to “look behind the curtain” and address the underlying problems. We need to get those underlying problems taken care of or we’ll just see that lawyer in the system again. In Colorado, we used diversion to address underlying problems and to reduce recidivism. We had as many as 400 lawyers in diversion programs at any one time. In Oregon, diversion has been in the rules, but it has been little used.

What about serious matters?

Our job is to protect the public. One of the first changes I made here was a new administrative suspension rule, which the Supreme Court approved effective November 1. Before, if a lawyer didn’t respond to a disciplinary investigation, nothing happened. Now, if a lawyer doesn’t respond, the lawyer will be administratively suspended. Our challenge is to be efficient, fair and effective.

Does it make any difference that the Bar is the regulatory body here and that function was directly under a Supreme Court agency in Colorado?

I don't think so. The majority of states have the regulatory function under the state bar. And, we all answer to the Supreme Court.

What are your plans for Oregon?

I was hired to look at the system and to make changes where changes make sense. We have a system that was designed for a much smaller bar 30 years ago that relied almost exclusively on volunteers. I want a system here that "gets behind the curtain" to help lawyers with problems and uses the Bar's limited resources wisely by getting recidivists out of the system.

What can Oregon lawyers expect from you?

I think you need to know the people you are regulating. If you ask Colorado lawyers about me, they will probably tell you that they have either met me or at least seen me at a CLE. I am trying to meet as many Oregon lawyers as I can, wherever they are. I recently had lunch with six lawyers in Hood River. I encourage lawyers and local bar groups to contact me and I am happy to meet with them.

ABOUT THE AUTHOR

Mark J. Fucile of Fucile & Reising LLP focuses on legal ethics, product liability defense and condemnation litigation. In his legal ethics practice, Mark handles professional responsibility, regulatory and attorney-client privilege matters and law firm related litigation for lawyers, law firms and legal

departments throughout the Northwest. He is a past member of the Oregon State Bar's Legal Ethics Committee, is a past chair of the Washington State Bar Rules of Professional Conduct Committee, is a member of the Idaho State Bar Professionalism & Ethics Section and is a co-editor of the OSB's Ethical Oregon Lawyer and the WSBA's Legal Ethics Deskbook. Mark also writes the monthly Ethics Focus column for the Multnomah (Portland) Bar's Multnomah Lawyer, the quarterly Ethics & the Law column for the WSBA NWLawyer (formerly Bar News) and is a regular contributor on risk management to the OSB Bar Bulletin, the Idaho State Bar Advocate and the Alaska Bar Rag. Mark's telephone and email are 503.224.4895 and Mark@frllp.com.