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Research Guides

LEGAL ETHICS

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I. INTRODUCTION

Researching issues in professional responsibility is a complex process and requires use of materials beyond judicial decisions and statutes. At the core of issues of legal ethics are the **rules** governing the conduct of lawyers and judges that are adopted by each state. These state rules are based on **model rules** adopted by the American Bar Association, most recently the Model Rules of Professional Conduct and the Code of Judicial Conduct. In addition, each state bar association has some mechanism for enforcing the rules through **disciplinary proceedings** and through the issuance of **opinion letters** on ethical issues submitted to it.

You may need to consult bar association ethics opinions, the Model Rules, and the version of the rules of professional conduct for your particular state. **Case law** research can also be complicated because ethics issues can arise from attorney discipline proceedings and such diverse substantive areas as legal malpractice and criminal appeals. This research guide concentrates on materials other than case law, although a few tips on finding judicial decisions in the area of legal ethics are included.

II. GETTING STARTED

If you need some background on professional responsibility or an overview of key issues, start with the text, *Understanding Lawyers' Ethics* (4th ed.) by Monroe H. Freedman (KF306 .F76 2010), *Professional Responsibility and Regulation* (2d ed.) by Rhode & Hazard (KF306 .R468 2007), or *Legal Ethics in a Nutshell* (3d ed. 2007) by Ronald Rotunda (Reserve KF306.Z9 R668 2007).

III. CODES OF PROFESSIONAL RESPONSIBILITY FOR LAWYERS

The American Bar Association has provided leadership in legal ethics through adoption of professional standards that serve as models of the law governing lawyers since adoption of the Canons of Professional Ethics in 1908. The latest version of these standards is the **Model Rules of Professional Conduct**, first adopted in 1983 and amended a number of times since then. The Model Rules replaced the **Model Code of Professional Responsibility**, which was adopted in 1969.

The **Model Rules of Professional Conduct** consist of a Preamble, a statement of their scope, and a list of approximately 58 rules, organized into eight subject areas. Each Rule is followed by a comment, explaining the Rule. **The Model Code of Professional Responsibility** is divided into three types of provisions: Canons, Disciplinary Rules, and Ethical Considerations, plus a set of Definitions. The Canons are general statements, defined as “axiomatic norms.” The Disciplinary Rules (DR) are considered to be mandatory. Ethical Considerations (EC) contain objectives towards which lawyers should strive.

The text of the current and historical versions of the *Model Code* and *Rules* with comments can be found in many places, including most of the resources listed at the end of this guide. A few convenient sources are:

Electronic Access

The American Bar Association’s **Center for Professional Responsibility** maintains a page for the Model Rules at http://www.americanbar.org/groups/professional_responsibility/publications/model_rules_of_professional_conduct.html. Included are the full text of the current *Rules*, the *Model Code* and the *1908 Canons of Professional Ethics*. Also includes lists detailing state adoption of the *Rules* and links to state ethics rules and opinions. In addition, it provides commentary, legislative history and a comparison of the *Rules* to the *ALI Restatement (3d) of the Law Governing Lawyers*.

Lexis & Westlaw also each have databases that bring together legal ethics rules:

For **Model Rules** on **Lexis**, choose the “Find a Source” link and enter “model rules of professional conduct” in the search box. On **Westlaw**, use the database identifiers ABA-MRPC (Unannotated) or ABA-AMRPC (Annotated).

For **State Rules** on **Westlaw**: Ethics rules are included in the database for court rules; identifier: XX-RULES (where XX is the two-letter state postal abbreviation). **Lexis** does not have a specific database to search state ethics rules. Electronic access is also provided through the **American Legal Ethics Library**, hosted by Cornell University Law School (<http://www.law.cornell.edu/ethics/listing.html>).

Print Sources

American Bar Association, *Model Rules of Professional Conduct* (annual) (Reserve KF306 .A74816). Includes a Table of Amendments and Correlation Table between the Model Code and Rules and subject index.

ABA Compendium of Professional Responsibility Rules and Standards (current ed.) (Reserve KF305.A2 A23). Includes Table of Amendments and a Correlation Table between the Model Code and Rules and a subject index, as well as selected federal procedural rules and a few well-known ABA Ethics Opinions.

American Bar Association, *Annotated Model Rules of Professional Conduct* (6th ed.) (Reserve KF305.A26 2007). Includes comparisons between the *Rules* and the *Code*, narrative on the legal background of each rule, discussion of related legal issues, and citations to supporting cases and opinions.

Morgan & Rotunda, *Model Rules of Professional Conduct and other Selected Standards, including California and New York Rules on Professional Responsibility* (current ed. Reserve KF306 .M67).

The *Model Code* and *Model Rules* are not binding on anyone, but serve as a model for adoption by states. Their interpretation in case law and ethics opinions also serves as guidance, since the state rules are based on these models. Since 1983, almost all of the states have adopted some form of the ABA Model Rules. The others use a version of the *Model Code*. California is the only state that has never adopted either model and has its own rules of professional responsibility. Many of its provisions are, of course, similar to the model acts. The states can modify the model rules when adopted or at any later time.

Codes or rules of professional conduct for lawyers and judges function much like statutes. However, most are not adopted by the legislature, but instead by state bar associations or the highest court of the jurisdiction. Because these model codes have effect in a state only as they are adopted by that state, begin your research by finding your state's version of the *Model Code* or *Model Rules*.

IV. SOURCES FOR STATE AND OTHER ETHICS CODES

American Bar Association Center for Professional Responsibility
(http://www.americanbar.org/groups/professional_responsibility/resources/links_of_interest.htm)
links to state codes, codes of other countries and those of other legal entities.

American Legal Ethics Library (from Cornell's Legal Information Institute)
(<http://www.law.cornell.edu/ethics>) provides links to state ethics codes and correlates them with the *Model Rules*. Includes narratives/commentary for some states.

Court Rules books. West publishes separate paperback volumes of court rules for many states which contain the current version of the rules or code of ethics. These books are found at the end of the code for each state (Level 3).

V. INTERPRETING THE RULES

A good way to get started is to consult the *Annotated Model Rules of Professional Conduct* (6th ed.) (Reserve KF305.A26 2007), which includes comparison between the Model Rules and the Code, a narrative on the legal background of each rule and paragraphs on each rule and sub-rule, describing the legal issues and giving citations to supporting cases and ethics opinions. This treatise is also available on Westlaw (ABA-AMRPC). Some states also have annotated versions of their ethics rules.

Another good source to determine the intent of the rules is American Bar Association, *A Legislative History: the Development of the ABA Model Rules of Professional Conduct 1982-2005* (KF306.A32 A16 2005). Its stated intent is to “lead researchers to a better understanding of the Model Rules as they exist on January 1, 2006 and to aid all those who interpret or apply the Model Rules . . .” It does that by tracing the evolution of the rules from the inception of the commission that created them to the present iteration, providing information on amendments proposed along the way and the arguments given for and against their adoption.

VI. ETHICS OPINIONS

The ABA and each state’s bar association issue **ethics opinions**. These opinions are written in response to requests for advice from lawyers who want to know if a past or contemplated future action violates an ethical code. There are usually both formal and informal opinions. **Formal opinions** are those the ABA deems relevant to a large number of attorneys and tend to contain more in-depth discussion, while **informal opinions** are given in cases where the ABA does not believe there will be much interest. These opinions are recommendations to the attorney and are not enforceable. They may be cited in another case as persuasive authority to show how the ABA or the state bar has interpreted the Code or Rules.

Formal and Informal ABA opinions are available on Westlaw (ABA-ETHOP) and in Lexis (choose the “Find a Source” tab and search for “ABA ethics opinions”) where they can be searched in full text. Formal opinions began in 1924 and informal opinions began publication in 1961.

Finding ethics opinions by subject

ABA/BNA Lawyer’s Manual on Professional Conduct is an electronic database (<http://search.library.duke.edu/search?id=DUKE003799767>) containing information on recent developments in the law of professional responsibility, including a subject index to opinions for the ABA and all states. The Ethics Opinions section has recent ABA opinions in full, plus a digest of recent state bar ethics opinions. The section for each state also tells where that state’s ethics opinions are published in full. The current volumes of this set include sections analyzing the law in a wide array of subject areas. **Note:** This title may also be accessed through Lexis & Westlaw.

Full text of ethics opinions

In addition to Westlaw and Lexis (see above), full text of ABA ethics opinions are in a series of volumes published by the ABA. Informal opinions were published only in summary form prior to 1960. New ABA Formal opinions are published regularly in the *ABA Journal* (Periodicals & HeinOnline).

For the full text of state bar association ethics opinions, the most comprehensive compilation is the *National Reporter on Legal Ethics and Professional Responsibility*, which is available in paper (up to 2004) (KF305 .A8 N37), on microfiche in the Microforms Room, and in Lexis. The *Reporter* contains sections on ethics opinions, including both bar association opinions and some court decisions, for 45 states and the District of Columbia. It is updated with two new binders each year, organized by state. Although this is the one set that collects the full text of all this material, it is not always complete and it is fairly cumbersome to use. You may find it easier to use another source to locate opinions and use this just for the full text of the opinions.

Many state ethics opinions are published in state bar journals, which the library collects. Current issues are in paper and older issues are in microfiche. Links to state ethics opinions available on the Web can be accessed from **American Legal Ethics Library** (Cornell's Legal Information Institute) (<http://www.law.cornell.edu/ethics>), and the American Bar Association's **Center for Professional Responsibility** (http://www.americanbar.org/groups/professional_responsibility/resources/links_of_interest.htm), or through Westlaw (xxETH-EO for individual states) or Lexis (Legal > Area of Law - By Topic > Ethics > Search Legal Ethics Opinions > By State).

VII. DISCIPLINARY PROCEEDINGS

Lawyers can, of course, be **disciplined** for a breach of state ethics rules in the state where they are licensed. Each state has its own disciplinary procedure for violations of its rules, but generally there is an initial, informal process to determine whether the charge or complaint filed requires a full administrative hearing. If a hearing is held, it is before an administrative board, usually created under the authority of the state's highest court. Appeals from these hearings are allowed, generally directly to the state's highest court. Results of disciplinary proceedings are most often found in the state's bar journal, but few states publish "opinions" regarding these hearings. It is usually only in the appellate court opinion that analysis of the ethics violation can be found.

VIII. CASE LAW

In determining issues of legal ethics, **court opinions** carry far more weight than the bar association ethics opinions described above. The context of case law involving legal ethics issues can be diverse, including appeals of disciplinary proceedings, legal malpractice, sanctions under FRCP 11, 26 and 37 and their state counterparts, and criminal appeals where ineffective assistance of counsel is alleged. Fortunately, they are easier to find using standard research tools.

A good way to find cases interpreting the Model Rules and Code is to Shepardize using *Shepard's Professional and Judicial Conduct Citations* (Reference Indexes – Shepard's). Shepard's will give you citations to court opinions, ethics opinions and law review articles dealing with the a provision of the Model Code or Model Rules, beginning in 1980. You cannot Shepardize or KeyCite these electronically on Lexis or Westlaw.

You can also use **digests** to find cases. When using the digest, try the key numbers under the topic *Attorney and Client*. Special databases of cases related to ethics have been created by both Lexis and Westlaw. In Lexis, the ETHICS library has files for each state and one for all states. In Westlaw, there are individual state databases and databases for all federal (FETH-CS) and all state cases (METH-CS).

IX. JUDICIAL ETHICS

Judges are bound by the general rules of professional conduct for all lawyers, but special rules of professional conduct for judges also exist. The **ABA Model Code of Judicial Conduct** was adopted in 1972 and revised most recently in 2007. It consists of a Preamble, Terminology section, and 4 Canons with comments. Prior to this there was the **ABA Canons of Judicial Conduct**. The text of the model code is usually included in most sources that have the Model Rules and Code for lawyers. The current Model Code is available online at http://www.americanbar.org/groups/professional_responsibility/publications/model_code_of_judicial_conduct.html, along with comparisons to prior editions. Like the rules for lawyers, each state adopts its own rules for judicial conduct, and most are based on this model.

X. PERIODICALS DEVOTED TO LEGAL ETHICS

To find law reviews and articles on legal ethics topics, use the standard indexes to legal literature, in Lexis, Westlaw, *LegalTrac* and *Index to Legal Periodicals and Books*. Some specific journals devoted to these issues which may be of interest include the following:

- *Georgetown Journal of Legal Ethics*
- *Journal of the Institute for the Study of Legal Ethics*
- *Journal of the Legal Profession* (University of Alabama School of Law)
- *Notre Dame Journal of Law, Ethics and Public Policy*
- *Professional Lawyer*

These journals, along with several others, are conveniently grouped in a Westlaw database (ETH-TP) where you can search them in full text. Lexis also has a database of selected articles from a broader selection of journals (Legal Ethics Law Review Articles, Combined).

XI. GENERAL RESEARCH RESOURCES

Westlaw & Lexis both have databases that bring together federal and state legal ethics materials including: cases, statutes, administrative materials, rules of professional conduct, ethics

and disciplinary opinions, law reviews, and practice materials. To access them, follow the following research trails:

Westlaw: All Databases > Topical Materials by Area of Practice > Legal Ethics and Professional Responsibility

Lexis: **Legal** > Area of Law - By Topic > Ethics

There are numerous treatises on legal ethics and professional responsibility. Generally these materials are in the KF306 area, but check the catalog under the subject headings: *Legal Ethics -- United States* and *Attorney and Client -- United States*.

ABA Legal Ethics: The Lawyer's Deskbook on Professional Responsibility (KF306 .R68 2011-2012) is a comprehensive volume by the Center for Professional Responsibility of the ABA that discusses current issues using up-to-date case references, commentary and discussion. It is organized around the Model Rules and includes references to the Restatement (Third) of the Law governing Lawyers.

ABA/BNA Lawyer's Manual on Professional Conduct (<http://search.library.duke.edu/search?id=DUKE003799767>) is the electronic equivalent of a print looseleaf service (no longer received in paper by the Law Library) that takes a comprehensive approach to providing materials on legal ethics and is updated monthly. It provides text and commentary of the ABA Model Rules and Model Code and ethics rules for all of the states, as well as opinions from the ABA and various states.

Restatement (Third) of the Law Governing Lawyers (2000) (KF395.G613 A7 2000), like all Restatements, has been developed over many years by legal experts and states the best practice in the area, with commentary. The *Restatement* is much broader in scope than the ABA rules and includes many areas of law affecting legal practice such as civil liability, evidence and agency. The *Restatement* is also available on Lexis (LAWGV2 and LAWGV3), Westlaw (REST-LGVL), and HeinOnline's American Law Institute Library.

National Reporter on Legal Ethics and Professional Responsibility (1980-2004; continues on LexisNexis) (KF305 .A8 N37) is a series of notebooks that is somewhat hard to access and use, but provides the full text of ABA and state ethics opinions, plus scholarly papers, book reviews and some court opinions. It also has some legislative history of the Model Code and Rules. Two new volumes are added as supplements each year and they are arranged by the type of material. The index is organized only by Model Rule number, rather than subject.

Good overviews of legal ethics are found in the text *Understanding Lawyers' Ethics* (4th ed. 2010) by Monroe H. Freedman (KF306 .F76 2010), Ronald Rotunda, *Legal Ethics in a Nutshell* (Reserve KF306.Z9 R668 2007), Geoffrey C. Hazard, Jr. & W. William Hodes, *The Law of Lawyering* (3d ed. 2000) (KF306 .H33 2001) and ABA Center for Professional Responsibility, *Annotated Model Rules of Professional Conduct* (6th ed. 2007) (KF305 .A26 2007).

ABA's Center for Professional Responsibility (http://www.americanbar.org/groups/professional_responsibility.html) has summaries of recent ABA ethics opinions, news about developments in legal ethics and drafts of proposed changes to the ABA rules. It also sponsors a fee-based research service, **ETHICSearch**, to "analyze ethical dilemmas and assist inquirers in identifying appropriate standards and interpretive materials to

resolve those dilemmas.” Service is restricted to lawyers, law students, and other legal professionals; no charge for initial consultation or preliminary research.

If your issue is legal malpractice, Ronald Mallen & Jeffrey Smith, the annual edition of *Legal Malpractice* (KF313 .M342; also available on Westlaw) is a good overview of the subject.

For criminal lawyers, John Wesley Hall, Jr, *Professional Responsibility in Criminal Defense Practice* [revised ed. of *Professional Responsibility of the Criminal Lawyer*] (3d ed. 2005) (KF306 .H25 2005; also available on Westlaw) will help you spot potential problems.

Bernard Wolfman & James P. Holden, *Ethical Problems in Federal Tax Practice* (2d ed. 1985) (KF311 .W60 1985), while somewhat dated, is still valuable for tax attorneys.

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