



LEGAL ETHICS:
RULES, STATUTES,
AND COMPARISONS



2 0 1 0 E D I T I O N

Richard Zitrin
Carol M. Langford
Kevin E. Mohr



LexisNexis

LEGAL ETHICS: RULES, STATUTES, AND COMPARISONS

2010 Edition

Includes ABA and California changes through 2009 and a Rule-by-Rule Comparison of the California and Both Old and New ABA Model Rules

Richard Zitrin

Adjunct Professor of Law

University of California, Hastings College of Law

Carol M. Langford

Adjunct Professor of Law

University of San Francisco School of Law

Kevin E. Mohr

Professor of Law

Western State University College of Law



This publication is designed to provide accurate and authoritative information in regard to the subject matter covered. It is sold with the understanding that the publisher is not engaged in rendering legal, accounting, or other professional services. If legal advice or other expert assistance is required, the services of a competent professional should be sought.

LexisNexis, the knowledge burst logo, and Michie are trademarks of Reed Elsevier Properties Inc, used under license. Matthew Bender is a registered trademark of Matthew Bender Properties Inc.

Copyright © 2010 Matthew Bender & Company, Inc., a member of the LexisNexis Group.
All Rights Reserved.

No copyright is claimed in the text of statutes, regulations, and excerpts from court opinions quoted within this work. Permission to copy material exceeding fair use, 17 U.S.C. § 107, may be licensed for a fee of 25¢ per page per copy from the Copyright Clearance Center, 222 Rosewood Drive, Danvers, Mass. 01923, telephone (978) 750-8400.

NOTE TO USERS

To ensure that you are using the latest materials available in this area, please be sure to periodically check the LexisNexis Law School web site for downloadable updates and supplements at www.lexisnexis.com/lawschool.

Editorial Offices

121 Chanlon Rd, New Providence, NJ 07974 (908) 464-6800
201 Mission St., San Francisco, CA 94105-1831 (415) 908-3200
www.lexisnexis.com

MATTHEW  BENDER

(2010-Pub.3083)

LEGAL ETHICS: RULES, STATUTES, AND COMPARISONS

2010 Edition

LEXISNEXIS LAW SCHOOL ADVISORY BOARD

Lenni B. Benson

*Professor of Law &
Associate Dean for Professional Development
New York Law School*

Raj Bhala

*Rice Distinguished Professor
University of Kansas, School of Law*

Charles P. Craver

*Freda H. Alverson Professor of Law
The George Washington University Law School*

Richard D. Freer

*Robert Howell Hall Professor of Law
Emory University School of Law*

Craig Joyce

*Andrews Kurth Professor of Law &
Co-Director, Institute for Intellectual Property and Information Law
University of Houston Law Center*

Ellen S. Podgor

*Professor of Law &
Associate Dean of Faculty Development and Electronic Education
Stetson University College of Law*

Paul F. Rothstein

*Professor of Law
Georgetown University Law Center*

Robin Wellford Slocum

*Professor of Law & Director,
Legal Research and Writing Program
Chapman University School of Law*

David I. C. Thomson

*LP Professor & Director, Lawyering Process Program
University of Denver, Sturm College of Law*

INTRODUCTION and USE NOTE

In 2002, with the assistance of retired California State Bar Court judge Ellen R. Peck, we updated this Rules Book to account for the work of the ABA “Ethics 2000” Commission, which was charged with reviewing the American Bar Association’s Model Rules of Professional Conduct and making any necessary revisions. This volume incorporates not only all the changes to the Model Rules adopted by the ABA House of Delegates in August 2001 and February 2002 after its receipt of the “Ethics 2000” Commission’s report, but also all substantive changes made to the Model Rules since that time. We have also included the changes made during that period to the California Rules of Professional Conduct and the selected sections of the California Business & Professions Code we have included in this book. Further, we have added sections that feature the ABA Model Court Rule on Insurance Disclosure, the California Rules of Court adopted to address multijurisdictional concerns, State Bar of California Resolutions concerning the delivery of pro bono and limited scope legal services, and the SEC Attorney Regulations promulgated pursuant to the Sarbanes-Oxley Act. To summarize, this volume contains the following:

- The Model Rules adopted by the ABA House of Delegates in 2001-2002, as amended in February 2002, August 2003, February 2008, February 2009, and August 2009. We have designated these Rules the **2002 ABA Model Rules**. They are in Part I.
- The text of the original, now-superseded Model Rules that were originally adopted in 1983. We have termed these rules the **1983 ABA Model Rules**. These rules, still the basis of the governing disciplinary rules in a diminishing number of jurisdictions, are in the form last amended prior to the Ethics 2000 changes. They follow the 2002 rules in Part I.
- A “**red-lined**” or legislative style copy of the **2002 Rules** (as amended) showing the changes from the 1983 rules, so that the differences between the two sets of rules may be easily reviewed. This “red-line” version has been updated periodically as the Model Rules have been amended, the latest revisions reflecting the 2009 amendments. They are also in Part I, and follow “clean” copies of the 2002 and 1983 rules.
- The **2004 ABA Model Court Rule on Insurance Disclosure**, which can also be found in Part I.
- The **ABA Model Code of Professional Responsibility (1969)**, although no state remains a “Code state” (New York was the last such state, but effective April 1, 2009, became a “Model Rule” state.) Nevertheless, we have included the Model Code in Part II and contemplate doing so for the foreseeable future because of its usefulness in tracing the genesis of many of the Model Rules and also because important case law from former Code states refer to the Code sections.
- A **California – Model Rules Comparison** that compares the ABA Model Rules to the California Rules and includes a substantive comparison between the 1983 Model Rules and the 2002 Model Rules. In this way, the 1983 Rules, the 2002 Rules (where substantive changes were made) and the more recent changes to those rules are compared to the California Rules and relevant California statutes. This can be

found in Part III, together with a table cross-referencing the California standards to the Model Rules.

- The **California Rules of Professional Conduct**, originally adopted in 1989 and 1992 and periodically amended, together with selected provisions of the California State Bar Act from the **California Business & Professions Code**.¹ Both the rules and statutes are in Part IV, together with **State Bar Resolutions on Pro Bono and Limited Scope Legal Services** and **Selected California Rules of Court Regarding Multijurisdictional Practice**.
- **SEC Final Standards of Professional Conduct** in Part V.

In particular, we hope the **Rules Comparison** will be of value both in comparing California standards to the ABA standards *and also* the 1983 ABA Rules to the 2002 ABA Rules. As we have with the “red-line” version of the 2002 Rules, we have updated the Rules Comparison periodically as there have been amendments to the Model Rules or the California Rules. However, it is important to note that our intent is not to provide an exhaustive comparison between the 1983 and 2002 versions. For an excellent comparison of the two sets of rules that not only discusses the substantive differences, but the reasons for the commission’s actions, see Margaret Colgate Love, *The Revised ABA Model Rules of Professional Conduct: Summary of the Work of “Ethics 2000”*, 15 GEO. J. LEGAL ETHICS 441 (2002). In addition, the Ethics 2000 Reporter’s Explanation of Changes for each Model Rule is available at: http://www.abanet.org/cpr/e2k/e2k-report_home.html.

CHANGES SINCE 2002 TO THE MODEL RULES AND OTHER RULES AND REGULATIONS GOVERNING LAWYERS

Since the ABA’s adoption of the 2002 Rules, there have been a number of changes not only to the Model Rules, but also to other rules and regulations governing lawyer conduct. We highlight significant changes below.

Changes to the Model Rules Since 2002.

Model Rule 1.10 (imputation and screening). The big news in 2009 was the ABA’s adoption, in February 2009, of amendments to Model Rule 1.10 that broadly permit non-consensual screening of lawyers who move from one private firm to another private firm. In effect, the Model Rule provision places private lawyers more or less on an equal footing with government lawyers, who are governed under MR 1.11, in their ability to be screened. This rule would allow such screening even if the screened lawyer had a substantial and direct involvement in the former client’s case, and even if the former and current clients’ cases were “substantially related.” This new rule would, in effect, change the presumption that the screened lawyers would share confidential

¹ California, unique among states, has lawyer conduct standards that emanate from both the state legislative process and the state Supreme Court. The Rules of Professional Conduct are proposed and adopted by the State Bar of California and then approved by the California Supreme Court. The legislature, however, also has plenary power to regulate lawyers’ conduct, memorialized in the State Bar Act, codified at California Business & Professions Code §§ 6000 et seq. There is, however, no codified plan for the court and legislature to work in concert. As a result, as to those issues that are dealt with directly by legislation, including most significantly confidentiality, the court has historically been reluctant to intrude or impose itself on the legislative process, and has tended to leave modifications up to the legislature.

information with their new firm. As of this writing, no jurisdiction has adopted the Model Rule screening provisions. However, there are 13 jurisdictions that have adopted similarly broad screening provisions: Delaware, Illinois, Kentucky, Maryland, Michigan, Montana, North Carolina, Oregon, Pennsylvania, Rhode Island, Tennessee, Utah and Washington. In addition, there are a number of jurisdictions that permit screening in limited situations, i.e., the jurisdiction's provision permits screening only if a lawyer did not "substantially participate," or was not "substantially involved," did not have a "substantial role," did not have "primary responsibility," etc., in the former client's matter, or when any confidential information that the lawyer might have obtained is deemed not material to the current representation (e.g., Mass.) or "is not likely to be significant" (e.g., Minn.) Jurisdictions that permit screening in such limited situations are: Arizona, Colorado, Indiana, Massachusetts, Minnesota, Nevada, New Jersey, New Mexico, North Dakota, Ohio, Tennessee (current rule only); and Wisconsin.

Model Rules 5.5 and 8.5 (Multijurisdictional Practice). In August 2002, the ABA House of Delegates adopted substantial revisions to Model Rules 5.5 and 8.5 that the ABA's MJP Commission had recommended in order to address the issues raised by multijurisdictional practice.

Model Rules 1.6 and 1.13. In August 2003, ABA Model Rules 1.6 (Confidentiality) and 1.13 (Organization as Client), among the most important, underwent material revision in 2003 following the corporate responsibility debacles in the early part of this decade. Both rules were modified to increase the permissible scope of attorney whistleblowing.

Model Rule 3.8. After 2003 no further amendments were made to the Model Rules until February 2008, when the House of Delegates adopted Model Rule 3.8, paragraphs (g) and (h). Based on provisions adopted by the New York State Bar Association in November 2007, MR 3.8(g) and (h) codify the duties of prosecutors when they learn of possible false convictions. Paragraph (g) sets forth a prosecutor's minimal duties when the prosecutor "knows of new, credible and material evidence" indicating a defendant was wrongfully convicted. Where the conviction took place in a prosecutor's jurisdiction, paragraph (h) requires the prosecutor "to remedy the conviction."

The ABA Model Court Rule on Insurance Disclosure

In August 2004, the ABA House of Delegates adopted an important model court rule on malpractice insurance disclosure. This rule requires a lawyer licensed in the jurisdiction to certify on his or her annual registration form whether the lawyer has and intends to maintain professional liability insurance. This model rule can be found at the end of Part I. A total of 23 jurisdictions now have some form of regulation for insurance disclosures. As we note in our introduction to that rule, a number of jurisdictions require lawyers to disclose the fact they do not have malpractice insurance directly to their clients, while still others require attorney disclosure as part of the lawyers' annual dues registration. In 2009, the California Supreme Court adopted a rule of professional conduct, effective January 1, 2010, that will require lawyers to disclose to their clients the fact they do not have liability insurance. See Cal. R. Prof. C. 3-410 in Part IV below.

2005 and 2006 ABA Resolutions Concerning the Attorney-Client Privilege

In 2005, the ABA House of Delegates unanimously approved a resolution on the attorney-client privilege that "opposes policies, practices and procedures of

governmental agencies that have the effect of eroding the attorney-client privilege and work-product doctrine,” and “the routine practice by government officials of seeking to obtain a waiver of the attorney-client privilege or work product doctrine through the granting or denial of any benefit or advantage.” The resolution grew out of the work of the ABA’s Task Force on Attorney-Client Privilege. This task force was formed in response to concerns that some government agencies have been routinely demanding that those subject to their regulatory oversight, particularly corporations, waive the privilege and work product protections in order to receive favorable treatment during criminal investigations and negotiations. The resolution as adopted by the House of Delegates is available at: http://www.abanet.org/buslaw/attorneyclient/materials/hod/recommendation_adopted.pdf. The Task Force’s full report is available at: <http://www.abanet.org/buslaw/attorneyclient/materials/hod/report.pdf>.

In 2006, the ABA House of Delegates again unanimously approved a resolution on the attorney-client privilege that opposes “policies, practices and procedures of governmental bodies that have the effect of eroding the attorney-client privilege and work product doctrine” and “the routine practice by government officials of seeking to obtain a waiver of the attorney-client privilege or work product doctrine through the granting or denial of any benefit or advantage.”

2002 Sarbanes-Oxley Act & SEC Regulations

The 2002 Sarbanes-Oxley legislation required the SEC to create regulations addressing the duties of attorneys who are confronted by wrongdoing on the part of their “issuer client.” While the “Final Standards of Professional Conduct” eventually adopted by the SEC are limited to reporting duties in matters overseen by the SEC, the impact of these regulations has been far broader, and warrants their inclusion in this volume. We direct particular attention to section 205.3, directly addressing reporting, and section 205.2, which contains the definitions used in the SEC standards. See Part V.

Also of note is a provision in the SEC’s proposed draft that the SEC did not include in the Final Standards — the so-called “noisy withdrawal” requirement. That proposal would have required a lawyer to (1) withdraw from the representation if the “issuer client” did not take appropriate action to correct violations of the securities laws; (2) notify the SEC in writing that the lawyer’s withdrawal was based on “professional considerations”; and (3) affirmatively disavow any opinions, documents, etc. that the lawyer might have submitted and that the lawyer had discovered were materially misleading. This broad and rather controversial “noisy withdrawal” language still has not, as of this writing, been added to the SEC “Final Standards.”

Changes to the California Rules of Professional Conduct, California Rules of Court, and Business & Professions Code Since 2002

In 2004, Section 6068(e) of the California Business & Professions Code, California’s statutory duty of confidentiality, was amended to allow for the first time a California lawyer to disclose confidential information to prevent a criminal act reasonably likely to result in death or substantial bodily harm. Soon thereafter, California Rule of Professional Conduct 3-100, which tracks and elaborates upon the statutory exception, was approved by the California Supreme Court. (See footnote 1 above for a discussion of the dual role of legislature and court in drafting

California ethics rules.) Both section 6068(e) and rule 3-100 became effective on July 1, 2004. We have described how rule 3-100 differs from Model Rule 1.6 in our California – Model Rules Comparison.

In 2004, the California Supreme Court also approved California Rules of Court 964-967 [subsequently renumbered Rules 9.45 to 9.48], addressing Multijurisdictional Practice (“MJP”). California’s approach to regulating MJP thus differs markedly from the ABA, which has addressed MJP in the Model Rules. These rules, together with several other rules of court that address MJP situations, may be found in the section titled “Selected California Rules of Court Regarding Multijurisdictional Practice” in Part IV. Our California – Model Rules Comparison includes a comparison of the new rules of court to ABA Model Rule 5.5.

In 2005, the California legislature reorganized and revised the California statute governing attorney work product, now found at Code Civ. Proc. § 2018.01 to 2018.08 (formerly Code Civ. Proc. § 2018). The revisions became effective on July 1, 2005.

In 2007, the California Supreme Court engaged in a major overhaul of the state’s Rules of Court. Effective January 1, 2007, the California Supreme Court implemented a major restructuring, reordering, and renumbering of over 1000 Rules of Court to make them clearer, better organized and easier to read. All of California’s rules concerning multijurisdictional practice (“MJP”) were given new numbers. We made those changes to those rules but kept the old numbers in brackets for ease of reference. The Court Rules can be found at the end of Part IV.

In 2008, substantive amendments were made to Bus. & Prof. Code §§ 6211-6213, which govern IOLTA deposit accounts. In addition, a new subdivision (c) was added to Bus. & Prof. Code § 6155, which governs Internet attorney matching services.

In July 2009, the California Supreme Court approved two new rules of professional conduct, a first that became effective immediately and a second that will become operative on January 1, 2010. The first rule is California Rule 1-650, which is based on Model Rule 6.5, and is intended to facilitate private firm lawyers’ participation in limited legal services programs. The second rule, which will become operative on January 1, 2010, is rule 3-410, and will require lawyers to disclose to their clients the fact they do not have liability insurance. Both rules can be found in the California Rules of Professional Conduct, in Part IV.

FURTHER NOTES ON THE MATERIALS IN THIS BOOK:

Every state has empaneled a committee or task force to review the Ethics 2000 Commission’s recommended changes to the Model Rules. Forty-three jurisdictions have now adopted new rules that incorporate Ethics 2000 revisions (Alabama, Alaska, Arizona, Arkansas, Colorado, Connecticut, Delaware, District of Columbia, Florida, Idaho, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Maryland, Minnesota, Mississippi, Missouri, Montana, Nebraska, Nevada, New Hampshire, New Jersey, New Mexico, New York, North Carolina, North Dakota, Ohio, Oklahoma, Oregon, Pennsylvania, Rhode Island, South Carolina, South Dakota, Utah, Vermont, Virginia, Washington, Wisconsin and Wyoming). Of particular note, five of those states represent the last of the Code states: Iowa, New York, Nebraska, Ohio and Oregon. Thus, there are no states that still use the Model Code as its source of lawyer regulation. As of this writing, the review committees in four other jurisdictions (Michigan, Tennessee, Texas, and West Virginia) have either released a complete set of proposed rules for public comment, or have completed their work and made recommendations either to their state bar’s board or to their state’s

highest court. Finally, California has indicated its intent to adopt the Model Rule format and numbering system.

Multijurisdictional practice (“MJP”) is here to stay. As set out in more detail in the introduction to California’s MJP rules, at the time of writing, 43 jurisdictions had adopted a rule either identical to, or similar to Model Rule 5.5, while the review committees in two other jurisdictions have recommended the adoption of some form of the rule. The rule is under study in four other jurisdictions. The same is true for Rule 8.5, the other MJP-adapted Model Rule of Professional Conduct, with 44 jurisdictions having adopted some form of the rule, two recommending its adoption, and four having it under study.

While we expect further Model Rules adoptions to occur, two points should be noted. **First**, about seven states continue to operate with rules based on the pre-Ethics 2000 Model Rules. The ABA’s Center for Professional Responsibility Policy Implementation Committee provides updates on rules adoptions in the states at <http://www.abanet.org/cpr/jclr/> [last visited 10/31/2009].

Second, and perhaps more important, even those states that have adopted post-Ethics 2000 versions of the Model Rules have not adopted the Model Rules verbatim. We mention this so that users of this book will not use it in their practices without also consulting their own jurisdiction’s rules. Even Delaware, the only state we are aware of that has adopted the Model Rules nearly verbatim, has adopted two provisions that were rejected by the ABA House of Delegates: one that permits a lawyer to divide a fee with another lawyer even if the lawyer provides no legal services or does not assume responsibility for the matter (Del. Rule of Prof. Conduct 1.5(e)); and another that permits ethical screening in the lateral movement of a lawyer from one private firm to another. (Del. Rule of Prof. Conduct 1.10(c).)

As might be expected, some of the former Code states have diverged significantly from the Model Rules, retaining provisions from their former codes. For example, Iowa, although largely adopting the Ethics 2000 Model Rules, has retained nearly all of the advertising and solicitation provisions in its former Code. Oregon, for its part, rejected the 2003 changes to Model Rule 1.6, used its existing standards on lawyer mediators instead of Model Rule 2.4, and kept a number of its other existing rules, including those addressing screening, sales of law practices, and covert activity. New York has also retained a great number of its former Code provisions in its new rules, and has not officially adopted the Model Rule comments. Divergence from the substance of the Model Rules, however, is not limited to former Code states. For example, both New Jersey and Pennsylvania, Model Rules states of long standing, continue to have rules that depart markedly from the Model Rules in many respects.

California’s Rule Revision Commission continues its review of California’s Rules of Professional Conduct in light of Ethics 2000 and the Restatement (Third) of the Law Governing Lawyers. One of its stated goals is to “harmonize” the California and ABA rules in a manner that has not previously been done. The Commission continues to make deliberate and thoughtful progress towards that goal. It has released the first five sets of six planned sets of rules for public comment and after initial hesitation determined to adopt the ABA’s rule-numbering system. See http://www.calbar.ca.gov/state/calbar/calbar_generic.jsp?cid=10129&id=1100 [last visited Oct. 31, 2009]. However, before these rules can be finalized, they must be adopted by the State Bar Board of Governors and approved by the California Supreme Court. As of this writing, 36 rules, all of which adhere to the Model Rule format

and numbering system, and which constitute about half of the anticipated total of new California Rules, have been adopted by the Board of Governors. Although the Board has reviewed many of the remaining rules prior to their circulation for public comment, only these 36 rules have been adopted. One rule has been tabled and a few have been returned to the Commission for further study. The work of the Commission and the Board of Governors will continue during the next year. It is anticipated that by this time next year, the full set of revised California Rules will have been delivered to the California Supreme Court for consideration and it is hoped, approval.

Professor Kevin Mohr of Western State University College of Law continues as our co-author of this rules volume. In his capacity as the Consultant, or “reporter,” to the California Rule Revision Commission, he is well-placed to update the California materials in this volume.

In future editions of this rules book, we will continue to provide updates and “keep score” as more states adopt revised rules, and we will attempt to identify any trends in lawyer regulation as they develop throughout our 50 states and the District of Columbia.

Richard Zitrin
Carol M. Langford
Kevin E. Mohr
November 2009

LEGAL ETHICS: RULES, STATUTES AND COMPARISONS
2010 EDITION

Including separate sets of 2002–03 and 1983 (as amended) ABA Rules, a “red-lined” edition of the 2002-03 and 1983 (as amended) rules together, and a Rule-by-Rule Comparison of the California Rules and both the 2002–03 and 1983 (as amended) ABA Rules

Table of Contents

Page

Part I.	ABA Model Rules	
2002 ABA Model Rules of Professional Conduct	1	
2002 ABA Model Rules Table of Contents	1	
2002 ABA Model Rules	3	
1983 ABA Model Rules of Professional Conduct, as amended	105	
1983 Model Rules Table of Contents	105	
1983 ABA Model Rules, as amended	107	
Subject Guide to the 1983 Model Rules	189	
Table “A” (Related Sections in the ABA Model Code)	204	
2002 ABA Model Rules, legislative (“redlined”) style.....	213	
2004 ABA Model Court Rule on Insurance Disclosure	327	
Part II.	ABA Model Code	
ABA Model Code of Professional Responsibility	329	
Model Code Table of Contents	329	
ABA Model Code.....	332	
Index to the Model Code	409	
Table “B” (Related Sections in the ABA Model Rules).....	423	
Part III.	California — Model Rules Comparisons	
Comparison Between the 1983 and 2002 ABA Model Rules of Professional Conduct and the California Rules of Professional Conduct and the California State Bar Act (Business & Professions Code)	429	
Table “C” (California Standards Related to Sections of the 1983 ABA Model Rules of Professional Conduct, as amended.....	464	
Part IV.	California Rules and Statutes	
California Rules Table of Contents	467	
California Rules of Professional Conduct	469	
Selected State Bar of California Resolutions of the Board of Governors	505	
Selected Statutes Table of Contents.....	509	
Selected Statutes of the California State Bar Act (Business & Professions Code)	513	
Selected California Rules of Court Regarding Multijurisdictional Practice.....	548	
Part V.	SEC Final Standards of Professional Conduct	563

PART I
AMERICAN BAR ASSOCIATION
MODEL RULES OF PROFESSIONAL CONDUCT (2002)

**AS AMENDED BY THE HOUSE OF DELEGATES – THROUGH
AUGUST 2009**

Copyright © 2002 – 2009 by the
American Bar Association.
All rights reserved. Permission to reprint granted
by the American Bar Association.

Table of Contents

	Page
Preamble: A Lawyer's Responsibilities, and Scope.....	3
Rule	
1.0 Terminology.....	6
1.1 Competence	9
1.2 Scope of Representation and Allocation of Authority Between Client and Lawyer	10
1.3 Diligence.....	12
1.4 Communication	13
1.5 Fees	15
1.6 Confidentiality of Information	17
1.7 Conflict of Interest: Current Clients	21
1.8 Conflict of Interest: Current Clients: Specific Rules	29
1.9 Duties to Former Client.....	34
1.10 Imputation of Conflicts of Interest: General Rule.....	37
1.11 Special Conflicts of Interest for Former and Current Officers and Government Employees	39
1.12 Former Judge, Arbitrator, Mediator, or Other Third-Party Neutral	42
1.13 Organization as Client.....	43
1.14 Client with Diminished Capacity.....	46
1.15 Safekeeping Property.....	49
1.16 Declining or Terminating Representation	50
1.17 Sale of Law Practice.....	52
1.18 Duties to Prospective Client.....	55
2.1 Advisor.....	56
2.2 [Deleted]	57
2.3 Evaluation for Use by Third Persons	57
2.4 Lawyer Serving as Third-Party Neutral.....	59
3.1 Meritorious Claims and Contentions.....	60
3.2 Expediting Litigation.....	61
3.3 Candor toward the Tribunal.....	61

Rule	Page
3.4 Fairness to Opposing Party and Counsel.....	64
3.5 Impartiality and Decorum of the Tribunal.....	65
3.6 Trial Publicity	66
3.7 Lawyer as Witness	68
3.8 Special Responsibilities of a Prosecutor	70
3.9 Advocate in Nonadjudicative Proceedings.....	72
4.1 Truthfulness in Statements to Others.....	73
4.2 Communication with Person Represented by Counsel	73
4.3 Dealing with Unrepresented Persons	75
4.4 Respect for Rights of Third Persons.....	75
5.1 Responsibilities of Supervisory Lawyers or Law Firms	76
5.2 Responsibilities of a Subordinate Lawyer	77
5.3 Responsibilities Regarding Nonlawyer Assistants	78
5.4 Professional Independence of a Lawyer.....	79
5.5 Unauthorized Practice of Law	80
5.6 Restrictions on Right to Practice	83
5.7 Restrictions Regarding Law-related Services	84
6.1 Voluntary Pro Bono Publico Service	86
6.2 Accepting Appointments.....	88
6.3 Membership in Legal Services Organization	88
6.4 Law Reform Activities Affecting Client Interests	89
6.5 Non-Profit and Court-Annexed Limited Legal-Service Programs	89
7.1 Communications Concerning a Lawyer's Services.....	90
7.2 Advertising	91
7.3 Direct Contact with Prospective Clients.....	93
7.4 Communication of Fields of Practice and Specialization.....	96
7.5 Firm Names and Letterheads	96
7.6 Political Contributions to Obtain Government Legal Engagements or appointments by Judges	97
8.1 Bar Admission and Disciplinary Matters	98
8.2 Judicial and Legal Officials	99
8.3 Reporting Professional Misconduct.....	99
8.4 Misconduct	100
8.5 Disciplinary Authority; Choice of Law	101

PREAMBLE: A LAWYER'S RESPONSIBILITIES

[1] A lawyer, as a member of the legal profession, is a representative of clients, an officer of the legal system and a public citizen having special responsibility for the quality of justice.

[2] As a representative of clients, a lawyer performs various functions. As advisor, a lawyer provides a client with an informed understanding of the client's legal rights and obligations and explains their practical implications. As advocate, a lawyer zealously asserts the client's position under the rules of the adversary system. As negotiator, a lawyer seeks a result advantageous to the client but consistent with requirements of honest dealings with others. As an evaluator, a lawyer acts by examining a client's legal affairs and reporting about them to the client or to others.

[3] In addition to these representational functions, a lawyer may serve as a third-party neutral, a nonrepresentational role helping the parties to resolve a dispute or other matter. Some of these Rules apply directly to lawyers who are or have served as third-party neutrals. See, e.g., Rules 1.12 and 2.4. In addition, there are Rules that apply to lawyers who are not active in the practice of law or to practicing lawyers even when they are acting in a nonprofessional capacity. For example, a lawyer who commits fraud in the conduct of a business is subject to discipline for engaging in conduct involving dishonesty, fraud, deceit or misrepresentation. See Rule 8.4.

[4] In all professional functions a lawyer should be competent, prompt and diligent. A lawyer should maintain communication with a client concerning the representation. A lawyer should keep in confidence information relating to representation of a client except so far as disclosure is required or permitted by the Rules of Professional Conduct or other law.

[5] A lawyer's conduct should conform to the requirements of the law, both in professional service to clients and in the lawyer's business and personal affairs. A lawyer should use the law's procedures only for legitimate purposes and not to harass or intimidate others. A lawyer should demonstrate respect for the legal system and for those who serve it, including judges, other lawyers and public officials. While it is a lawyer's duty, when necessary, to challenge the rectitude of official action, it is also a lawyer's duty to uphold legal process.

[6] As a public citizen, a lawyer should seek improvement of the law, access to the legal system, the administration of justice and the quality of service rendered by the legal profession. As a member of a learned profession, a lawyer should cultivate knowledge of the law beyond its use for clients, employ that knowledge in reform of the law and work to strengthen legal education. In addition, a lawyer should further the public's understanding of and confidence in the rule of law and the justice system because legal institutions in a constitutional democracy depend on popular participation and support to maintain their authority. A lawyer should be mindful of deficiencies in the administration of justice and of the fact that the poor, and sometimes persons who are not poor, cannot afford adequate legal assistance. Therefore, all lawyers should devote professional time and resources and use civic influence to ensure equal access to our system of justice for all those who because of economic or social barriers cannot afford or secure adequate legal counsel. A lawyer should aid the legal profession in pursuing these objectives and should help the bar regulate itself in the public interest.

[7] Many of a lawyer's professional responsibilities are prescribed in the Rules of Professional Conduct, as well as substantive and procedural law. However, a lawyer is also guided by personal conscience and the approbation of professional peers. A lawyer should strive to attain the highest level of skill, to improve the law and the legal profession and to exemplify the legal profession's ideals of public service.

[8] A lawyer's responsibilities as a representative of clients, an officer of the legal system and a public citizen are usually harmonious. Thus, when an opposing party is well represented, a lawyer can be a zealous advocate on behalf of a client and at the same time assume that justice is being done. So also, a lawyer can be sure that preserving client confidences ordinarily serves the public interest because people are more likely to seek legal advice, and thereby heed their legal obligations, when they know their communications will be private.

[9] In the nature of law practice, however, conflicting responsibilities are encountered. Virtually all difficult ethical problems arise from conflict between a lawyer's responsibilities to clients, to the legal system and to the lawyer's own interest in remaining an ethical person while earning a satisfactory living. The Rules of Professional Conduct often prescribe terms for resolving such conflicts. Within the framework of these Rules, however, many difficult issues of professional discretion can arise. Such issues must be resolved through the exercise of sensitive professional and moral judgment guided by the basic principles underlying the Rules. These principles include the lawyer's obligation zealously to protect and pursue a client's legitimate interests, within the bounds of the law, while maintaining a professional, courteous and civil attitude toward all persons involved in the legal system.

[10] The legal profession is largely self-governing. Although other professions also have been granted powers of self-government, the legal profession is unique in this respect because of the close relationship between the profession and the processes of government and law enforcement. This connection is manifested in the fact that ultimate authority over the legal profession is vested largely in the courts.

[11] To the extent that lawyers meet the obligations of their professional calling, the occasion for government regulation is obviated. Self-regulation also helps maintain the legal profession's independence from government domination. An independent legal profession is an important force in preserving government under law, for abuse of legal authority is more readily challenged by a profession whose members are not dependent on government for the right to practice.

[12] The legal profession's relative autonomy carries with it special responsibilities of self-government. The profession has a responsibility to assure that its regulations are conceived in the public interest and not in furtherance of parochial or self-interested concerns of the bar. Every lawyer is responsible for observance of the Rules of Professional Conduct. A lawyer should also aid in securing their observance by other lawyers. Neglect of these responsibilities compromises the independence of the profession and the public interest which it serves.

[13] Lawyers play a vital role in the preservation of society. The fulfillment of this role requires an understanding by lawyers of their relationship to our legal system. The Rules of Professional Conduct, when properly applied, serve to define that relationship.

SCOPE

[14] The Rules of Professional Conduct are rules of reason. They should be interpreted with reference to the purposes of legal representation and of the law itself. Some of the Rules are imperatives, cast in the terms "shall" or "shall not." These define proper conduct for purposes of professional discipline. Others, generally cast in the term "may," are permissive and define areas under the Rules in which the lawyer has discretion to exercise professional judgment. No disciplinary action should be taken when the lawyer chooses not to act or acts within the bounds of such discretion. Other Rules define the nature of relationships between the lawyer and others. The Rules are thus partly obligatory and disciplinary and partly constitutive and descriptive in that they define a lawyer's professional role. Many