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The Sources of Law for Professional Responsibility

Key Concepts



- Professional Responsibility is about the rules and values you will encounter in law practice.
 - Most states or jurisdictions have adopted some version of the A.B.A. Model Rules of Professional Responsibility as a source of rules governing the conduct of lawyers in that state.
 - In this book, you will learn the rules by studying the Delaware Lawyers' Rules of Professional Conduct ("Delaware Rules"). The Delaware Rules mirror the A.B.A. Model Rules of Professional Responsibility very closely.
 - In addition to the professional responsibility rules, courts interpret other rules, such as the rules of evidence or the rules of civil procedure, to regulate the conduct of lawyers.
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Introduction



Professional Responsibility is about the rules and values you will encounter in law practice. In other courses, you study law and policy concerning clients. In this course, you will study rules that actually concern yourself, your colleagues, and your adversaries. As you begin this course, take a few minutes to reflect on your own views about what it means to be a lawyer and what you want from a legal career. This will help you establish a baseline for evaluating and applying what you learn in this course.

When you begin your study of professional responsibility, you will quickly realize that it is a study of the rules and standards that govern the conduct of lawyers.

However, remember that it is actually state rules (and not federal rules) that regulate the legal profession. Each state has developed its own rules of professional responsibility that also cover bar admission and the discipline procedures related to the conduct of lawyers (and judges) in that particular state. Luckily, there are many similarities between states regarding these procedures and standards. This similarity results mainly from the fact that the American Bar Association (A.B.A.) has taken the leading role in the regulation of lawyers and judges by adopting a set of Model Rules and most states have adopted a version of these standards so there is little variation between different states' rules.

In addition to these rules, it is important to recognize that there are other sources of standards that govern lawyers and judges as well. For example, constitutional law provides standards for what constitutes ineffective assistance of counsel. Further, for concepts such as the attorney-client privilege, we look to the rules of evidence or common law.

A. The Delaware Lawyers' Rules of Professional Conduct

In this book, we will study the Delaware Lawyers' Rules of Professional Conduct ("Delaware Rules"). The Delaware Rules are easily accessible and they also follow the A.B.A. Model Rules of Professional Conduct very closely. In most states, the state courts promulgate or adopt the ethics rules (with the exception of California where the legislature has a major role). Over the years, the A.B.A. and most states have created various commissions to evaluate their professional responsibility rules and suggest changes. In other words, the rules of professional responsibility change over time. For example, as a result of lawyer involvement in corporate scandals such as Enron, various commissions on corporate responsibility recommended several modifications to the professional responsibility rules covering corporations. You should think about the rules of professional responsibility within the context of an ever-changing legal landscape.

B. Ethics Opinions

Ethics opinions are also a source of law for the conduct of lawyers and judges. Ethics opinions interpret the professional responsibility rules. Each state (as well as the A.B.A. Committee on Ethics and Professional Responsibility) publishes ethics opinions. The opinions examine questions that involve the application of the professional responsibility rules to the specific facts of a case. These ethics opinions can typically be found online and are instructive as to how the rules should be

interpreted in that jurisdiction. Each state typically has a board of ethics or a board of professional responsibility whose job it is to investigate and hear complaints filed against lawyers. A particular state's board of professional responsibility will apply its own state's rules of conduct to the facts of a case. One state's opinion on a rule is not binding on another state. Further, ethics opinions—unlike published judicial opinions—typically have an educational or advisory purpose only. A particular board investigating or ruling on a case is not bound by past precedent (although the board may use prior decisions as a guide and come to its own conclusion on the unique facts of the case before it).

C. Other Sources of Law

In addition to the professional responsibility rules and ethics opinions, there are a few additional sources of law that are important to your understanding of professional responsibility. For example, this book will examine separate state rules on issues such as how one is admitted to the bar in a state and how a lawyer is disciplined in a given state. Each state has its own rules governing these issues. This book will not examine all of the states' separate rules, but instead, will study the commonalities among the various state rules and case law—using the Delaware Rules as an example.

Another example of additional sources of law governing lawyer conduct is the rules of evidence. For example, the attorney-client privilege is relevant to lawyer conduct, but this rule actually comes from the evidentiary rules or common law. The work product doctrine comes from a rule of civil procedure and various common law decisions. And to understand the standards governing the issue of ineffective assistance of counsel, one must study the constitutional principles that apply to this legal issue.

D. The Standards for Judges

The A.B.A. adopted the first Model Code of Judicial Conduct in 1972. In 1990, the A.B.A. Model Code of Judicial Conduct became the basis for many state judicial codes today. States adopt their own rules pertaining to the conduct of judges. Although you will be responsible for knowing the A.B.A. Model Code of Judicial Conduct for the MPRE, we will not cover the rules pertaining to the conduct of judges in this book.

E. The Role of the Courts

In addition to each state court's role in adopting ethics rules for lawyers, courts also interpret those rules through 1) their review of discipline cases against individual lawyers, and 2) other matters that require them to apply the ethics rules (such as in reviewing motions to disqualify based upon the conflicts of interest rules).

Bar associations also play an important role in interpreting the professional conduct rules. Many bar associations establish ethics committees to advise lawyers on whether their proposed conduct conforms to the rules. This advice can take the form of informal, telephone advice in urgent situations or of systematic, written opinions. Note that bar opinions are not binding on state courts in disciplinary matters. Nonetheless, courts tend to treat bar opinions with some deference.

Further, both courts and bar associations rely on the American Law Institute's Restatement of the Law Governing Lawyers. The Restatement is not binding but has been considered very influential. In doing research on professional ethics issues, consider using the Restatement as a good source of authority as well as your state bar's ethics opinions, A.B.A. ethics opinions, and case law.

Finally, remember that the common law and statutes also regulate lawyer conduct. The most familiar common law regulation of lawyers is the law of malpractice, but other common law doctrines, such as fraud, also apply to lawyers. In addition, legislation regulates lawyers directly, such as the Sarbanes-Oxley provisions governing lawyers who practice before the Securities and Exchange Commission, the Bankruptcy Reform Act that applies to bankruptcy lawyers, and laws of general application, such as criminal law.

Quick Summary



You are beginning your exploration of Professional Responsibility. By now, you realize that this is a course that applies to you personally, provides you with a framework for understanding and developing your career as a lawyer, and is a subject that matters a great deal to the organized bar. We hope that this book provides you with the necessary tools for analyzing these and related issues in this course, as well as preparing you for how these issues will impact you in your career.

Test Your Knowledge



To assess your understanding of the material in this chapter, [click here](#) to take a quiz.