



# Duke Law

# 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 jurisdiction. 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 jurisdiction. **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 basic background on professional responsibility or an overview of key issues, start with these texts:

- *The Law of Lawyering* (4th ed.) by Geoffrey C. Hazard, Jr (online in Fastcase: <https://find.library.duke.edu/catalog/DUKE008937738> & Cheetah: <https://find.library.duke.edu/catalog/DUKE008165176> & updated to 2017 at KF306.H333)
- *Legal Ethics in a Nutshell* (5th ed.) by Ronald Rotunda (KF306.Z9 R668 2018 & online: <https://find.library.duke.edu/catalog/DUKE008891471>)
- *Legal Ethics, Professional Responsibility, and the Legal Profession*, by Sisk et al (KF306 .S57 2018 & online: <https://find.library.duke.edu/catalog/DUKE008891502>)

- ***Mastering Professional Responsibility*** (2d ed.) by Grace M. Giesel (KF306 .G547 2015)
- ***Understanding Lawyers' Ethics*** by Monroe Freedman (KF306.F76 2016).

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

To access legal ethics resources electronically, follow these paths in the major services:

- **Westlaw:** Secondary Sources > By Topic > Ethics & Professional Responsibility
- **Lexis+:** Explore > Practice Area > Legal Ethics
- **Bloomberg Law:** Browse > Practice Centers > Legal Ethics & Professional Responsibility

American Bar Association, ***Legal Ethics: The Lawyer's Deskbook on Professional Responsibility*** (KF306 .R68 & online in Westlaw) 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*** (online in Bloomberg Law) is the electronic equivalent of a looseleaf service (no longer published in print) that takes a comprehensive approach to providing materials on legal ethics. 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 digest summaries of opinions from various states.

***Restatement (Third) of the Law Governing Lawyers*** (2000) (KF395.G613 A7 2000 & online), 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 available electronically on Lexis+, Westlaw, and HeinOnline's American Law Institute Library.

If your issue is legal malpractice, Ronald Mallen & Jeffrey Smith, the annual edition of ***Legal Malpractice*** (KF313 .M342 & online in 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. (KF306 .H25 & online in Westlaw) will help you spot potential problems.

### III. CODES OF PROFESSIONAL RESPONSIBILITY FOR LAWYERS

The American Bar Association has provided leadership in legal ethics through the adoption of professional standards that serve as models of the law governing lawyers since the 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 of Professional Conduct** consist of a Preamble, a statement of their scope, and a list of approximately 60 rules, organized into eight subject areas. Each Rule is followed by a comment explaining the Rule.

The Model Rules replaced the **Model Code of Professional Responsibility**, which was adopted in 1969. 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:

The American Bar Association’s **Center for Professional Responsibility** maintains a page for the Model Rules of Professional Conduct at [http://www.americanbar.org/groups/professional\\_responsibility/publications/model\\_rules\\_of\\_professional\\_conduct.html](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 included are lists detailing state adoption of the *Rules* and links to state ethics rules and opinions. In addition, it provides commentary on recent changes and a comparison of the *Rules* to the *ALI Restatement (3d) of the Law Governing Lawyers*.

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.

American Bar Association, ***Annotated Model Rules of Professional Conduct***, 8th ed. (Reserve KF305.A26 2015). 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.

To access the **Model Rules** on **Lexis**, follow the path Practice Area > Legal Ethics > All Legal Ethics Administrative Materials to view available sources, including “ABA Model Rules of Professional Conduct and Code of Judicial Conduct.” On **Westlaw**, use the path Secondary Sources > By Topic > Ethics & Professional Responsibility to find annotated and unannotated versions of the Rules. In **Bloomberg Law**, visit Practice Centers > Legal Ethics & Professional Responsibility.

***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.

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, and a 2017 revision brought their organization closer to that of the Model Rules. 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 Other Links of Interest**

([https://www.americanbar.org/groups/professional\\_responsibility/resources/links\\_of\\_interest/](https://www.americanbar.org/groups/professional_responsibility/resources/links_of_interest/)) links to state codes, codes of other countries and those of other legal entities.

**Court Rules books.** West and/or Lexis 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), and may also be found in the online catalog with a subject heading search for *court rules – [state]*.

For **state rules** on **Westlaw, Lexis and Bloomberg Law**: Ethics rules are included in the databases for a state's Statutes & Court rules.

#### V. INTERPRETING THE RULES

A good way to begin interpreting ethics rules is to consult the *Annotated Model Rules of Professional Conduct* (9<sup>th</sup> ed.) (Reserve KF305.A26 2019 & online in Westlaw), 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.

Another good source to determine the intent of the rules is the American Bar Association's *A Legislative History: the Development of the ABA Model Rules of Professional Conduct 1982-2013* (KF306 .L45 2013). Its stated intent is to "lead researchers to a better understanding of the Model Rules ... 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.

Some states also offer annotated versions of their ethics rules. Search the online catalog for the subject heading *court rules – [state]* to locate available annotated titles.

## 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 whether 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 as much general 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 (Administrative Decisions & Guidance > Ethics & Disciplinary Opinions > ABA Ethics Opinions) and in Lexis (Practice Area > Legal Ethics) where they can be searched in full text. Formal opinions began in 1924 and informal opinions began publication in 1961.

*ABA/BNA Lawyer's Manual on Professional Conduct* is an electronic database (available in Bloomberg Law) that includes recent legal ethics news stories, the full text of ABA ethics opinions as well as a digest of state ethics opinions, and links to additional ethics resources by state. The site also provides the full text of the ABA's Model Rules of Professional Conduct as well as a link to the ABA's comparison chart between the ABA Model Rules and the adopted rules of each jurisdiction.

In addition to the online services listed above, full texts of ABA ethics opinions appear in a series of volumes published by the ABA. Informal opinions were published only in summary form prior to 1960.

- *Opinions of the Committee on Professional Ethics* (KF305.A19 O6 1967) includes Formal Opinions 1-315.
- *Informal Ethics Opinions* (KF305 .A2 1975) is a two-volume set which includes all known Informal Opinions from 1961-1973.
- *Formal and Informal Ethics Opinions* (KF305 .A2) continues the prior volumes, compiling both types of opinions into a single publication.

New ABA Formal opinions are published regularly in the *ABA Journal* (Periodicals & online: <https://find.library.duke.edu/catalog/DUKE004349147>). Recent opinions are available for free on the ABA Center for Professional Responsibility website ([http://www.americanbar.org/groups/professional\\_responsibility/publications/ethics\\_opinions.html](http://www.americanbar.org/groups/professional_responsibility/publications/ethics_opinions.html)), but archived opinions are available only to members or for a fee at this location.

For the full text of state bar association ethics opinions, a comprehensive historical compilation was the *National Reporter on Legal Ethics and Professional Responsibility*, which is available in paper (1982-2004) (KF305 .A8 N37), on microfiche in the Microforms Room (1983-2007), and in Lexis (up to 2011). This *Reporter* contains sections on ethics opinions, including both bar

association opinions and some court decisions, for most states and the District of Columbia. Although this is the one set that collected the full text of all this material, it was not always complete and it can be cumbersome to use without a known citation.

Many state ethics opinions are published in state bar journals. Titles in the library's collection may be in paper (Periodicals, Level 4) or in microfiche, with many titles also available in HeinOnline's Bar Journals Library (<http://search.library.duke.edu/search?id=DUKE003131760>). Links to state ethics opinions available on the Web can be accessed from the state bar or bar association (accessible through the ABA's interactive map: <http://shop.americanbar.org/ebus/ABAGroups/DivisionforBarServices/BarAssociationDirectories/StateLocalBarAssociations.aspx>), or through Westlaw (Administrative Decisions & Guidance > Ethics & Disciplinary Opinions) or Lexis (Practice Area > Legal Ethics > filter 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. Results of disciplinary proceedings are most often found in the disciplinary body's website and in the state's **bar journal**, but few states publish detailed "opinions" or orders regarding these hearings.

To search for attorney discipline records and any available opinions from state bars, begin at the ABA *Directory of Lawyer Disciplinary Agencies* (last updated 2020) ([https://www.americanbar.org/content/dam/aba/administrative/professional\\_responsibility/directory\\_disciplinary\\_agencies\\_online.pdf](https://www.americanbar.org/content/dam/aba/administrative/professional_responsibility/directory_disciplinary_agencies_online.pdf)). Most state bars provide public access to attorney disciplinary records as part of a member directory search.

**Appeals** from these hearings are allowed, generally directly to the state's highest court. Appellate court opinions will likely contain more detailed analysis of the ethics violation than the bar's notice of disciplinary action.

## VIII. CASE LAW

In determining issues of legal ethics, **court opinions** carry 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, such as case law databases in Bloomberg Law, Lexis, Westlaw, or Fastcase.

Another way to find historical cases interpreting the Model Rules and Code is to Shepardize using *Shepard's Professional and Judicial Conduct Citations* (RefKF308.A535 S46, updated through 2008). *Shepard's* will provide citations to court opinions, ethics opinions and

law review articles dealing with 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** in print or online to find ethics cases. When using the digest, try the key numbers under the topic *Attorney and Client*. In Westlaw, the digest key number outline can be browsed at the Tools tab; in addition, there are individual state databases and databases for all federal and all state cases. In other online services, a search of case law for a particular jurisdiction will retrieve case results dealing with legal ethics topics.

## 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 2010. 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](http://www.americanbar.org/groups/professional_responsibility/publications/model_code_of_judicial_conduct.html), along with comparisons to prior editions.

The *Model Code of Judicial Conduct* is also reprinted in the ABA's annual publication *Model Rules of Professional Conduct* (Reserve KF306 .A74816). An annotated version of the most recent judicial code is also available (KF8779 .A96 2016).

Like the rules for lawyers, each state adopts its own rules for judicial conduct, and most are based on this ABA model. State judicial conduct codes are generally reproduced as part of state court rules publications and databases (see section IV).

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