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ETHICS AND NEGOTIATION
A BIBLIOGRAPHY OF SELECTED MATERIALS
JUNE 2005

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Primary Sources

ABA Model Rules

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INTRODUCTION

Traditionally bar associations have regulated the conduct of attorneys with disciplinary rules. These disciplinary rules are the equivalent of statutes and thus constitute a primary source of law. To provide for more uniformity among states, the American Bar Association (ABA) compiled and published its Model Rules of Professional Conduct in the early 1980s. Since then, many state bar associations enacted these rules verbatim or with slight modifications.

To assist with the interpretation of the ABA Model Rules of Professional Conduct, the *ABA Standing Committee on Ethics and Professional Responsibility* renders both formal and informal ethical opinions. These opinions provide courts with guidance.

Ethical cases, resolving interpretation of disciplinary rules, can be obtained with traditional case finding methods. There are also subject specific publications devoted to ethics decisions.

Secondary sources, specifically a RESTATEMENT as well as subject specific periodicals, also exist as do Internet sites.

PRIMARY SOURCES

ABA MODEL RULES

There are eight topics addressed in the ABA MODEL RULES OF PROFESSIONAL CONDUCT. These are:

- Attorney/Client Relationship (Rule 1)
- Counselor (Rule 2)
- Advocate (Rule 3)
- Transactions with Persons Other Than Clients (Rule 4)
- Law Firms and Associations (Rule 5)
- Public Service (Rule 6)
- Information About Legal Services (Rule 7)
- Maintaining the Integrity of the Profession (Rule 8)

ABA MODEL RULES OF PROFESSIONAL CONDUCT are **reprinted** in:

[MODEL RULES OF PROFESSIONAL CONDUCT AND CODE OF JUDICIAL CONDUCT](#) (American Bar Association 1983.)

KF 305 .A2 A34 1983b

ANNOTATED MODEL RULES OF PROFESSIONAL CONDUCT (5th ed.; Center for Professional Responsibility, American Bar Association 2003.)

KF 305 .A2 A34a 2003

The ANNOTATED MODEL RULES OF PROFESSIONAL CONDUCT serve as a guide that should be interpreted with reference to the purposes of legal representation and of the law itself. The ANNOTATED MODEL RULES are divided into eight categories. The RULES advise lawyers how to deal with lawyer-client relationships, how to handle transactions with persons other than their clients, and advises attorneys how to counsel and advocate.

ABA/BNA LAWYER'S MANUAL ON PROFESSIONAL CONDUCT (Supp. American Bar Association 1984 - .)

KF 305 .A8 .A22

The ABA/BNA LAWYER'S MANUAL ON PROFESSIONAL CONDUCT is a loose leaf service, containing the full text of the ABA MODEL RULES, the ABA ethical opinions, and digests of states' ethical opinions.

With a fee subscription, this resource is available electronically at the BNA site at <http://www.bna.com> (Visited June 16, 2005.) With certain BNA package purchases, it is also possible to access the Manual via Lexis and Westlaw.

Intent of the rules can be determined from:

A LEGISLATIVE HISTORY: THE DEVELOPMENT OF THE ABA MODEL RULES OF PROFESSIONAL CONDUCT, 1982-1998 (2nd ed.; Center for Professional Responsibility, American Bar Association 1999.)
KF 306 .L45 1999

THE LEGISLATIVE HISTORY OF THE MODEL RULES OF PROFESSIONAL CONDUCT: THEIR DEVELOPMENT IN THE ABA HOUSE OF DELEGATES (Center for Professional Responsibility, American Bar Association 1987.)
KF 305 .A32 A34 1987

LAWYER REGULATION FOR A NEW CENTURY: REPORT OF THE COMMISSION ON EVALUATION OF DISCIPLINARY ENFORCEMENT (Center for Professional Responsibility, American Bar Association 1992.)
Available at http://www.abanet.org/cpr/mckay_report.html (Visited June 20, 2005.)

Ethical opinions, construing the provisions of the MODEL CODE, can be found in:

FORMAL AND INFORMAL ETHICS OPINIONS (Standing Committee on Ethics and Professional Responsibility, American Bar Association 1985.)
KF 305 .A85 1987

RECENT ETHICS OPINIONS (Committee on Ethics and Professional Responsibility, American Bar Association 2000.)
KF 305 .A85

ABA MODEL RULE 4, Transactions with Persons Other than Clients, was amended. The Rule's textual changes as well as a Reporter's Explanation of Changes, can be found at the ABA Center for Professional Responsibility site in the Ethics 2000, February 2002 Report. See

- http://www.abanet.org/cpr/e2k-41_202.html (Truthfulness in Statements to Others) for Model Rule 4.1;
 - * <http://www.abanet.org/cpr/e2k-rule42.html> (Communication with Person Represented by Counsel) for Model Rule 4.2;
 - <http://www.abanet.org/cpr/e2k-rule43.html> (Dealing with Unrepresented Person) for Model Rule 4.3; and
 - http://www.abanet.org/cpr/e2k-44_202.html (Respect for Rights of Third Persons) for Model Rule 4.4.
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_____ **STATES**

ABA/BNA LAWYER'S MANUAL ON PROFESSIONAL CONDUCT (Supp. American Bar Association 1984-2005.)

KF 305 .A8 .A22

CODE OF PROFESSIONAL RESPONSIBILITY BY STATE (National Center for Professional Responsibility, American Bar Association 1980 - .)

KF 306 .Z95 A431

LIST OF STATES ADOPTING MODEL RULES OF PROFESSIONAL CONDUCT (Center for Professional Responsibility, American Bar Association), available at http://www.abanet.org/cpr/mrpc/alpha_states.html (Visited June 21, 2005.)

NATIONAL REPORTER ON LEGAL ETHICS AND PROFESSIONAL RESPONSIBILITY. J. Myron Jacobstein and Roy M. Mersky (University Pub. of America 1982.)

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STATES: LINKS TO OTHER LEGAL ETHICS AND PROFESSIONAL RESPONSIBILITY PAGES (Center for Professional Responsibility, American Bar Association), available at <http://www.abanet.org/cpr/links.html#States> (Visited June 20, 2005.)

FLORIDA

FLORIDA BAR, LAWYER REGULATION, available at

<http://www.floridabar.org/tfb/flabarwe.nsf> (Visited June 20, 2005.)

FLORIDA LEGAL ETHICS (Continuing Legal Education, Florida Bar 1992.)

KFF 76.5 .A2 F56

FLORIDA RULES OF PROFESSIONAL CONDUCT (Florida Bar 1987.)

KFF 76.5.A2 F5 1987

GUIDELINES FOR PROFESSIONAL CONDUCT (Florida Bar 1995.)

KFF 76 .5 .A2 F4 1995

PROFESSIONAL ETHICS OF THE FLORIDA BAR (3rd ed.; Florida Bar 1998 - .)

KFF 76 .5 .A2 A523

See also THE FLORIDA BAR, ETHICS OPINIONS, available at <http://www.flabar.org/tfb/TFBETOpin.nsf/EthicsIndex?OpenForm> (Visited June 20, 2005.)

THE RULES REGULATING THE FLORIDA BAR (Florida Bar Committee on Lawyer Professionalism, Florida Bar 1995.)

KFF 76 .5 .A2 R85 1995

See also THE FLORIDA BAR, RULES REGULATING THE FLORIDA BAR , available at <http://www.floridabar.org/divexe/rrtfb.nsf/WContents?OpenView> (Visited June 20, 2005.)

STAFF OPINIONS (FLORIDA BAR 1997 - .)

KFF 76.5.A2 S7

SECONDARY SOURCES

RESTATEMENTS

RESTATEMENT OF THE LAW GOVERNING LAWYERS (American Law Institute 2000 - .)

KF 395 .A2 L382

The Restatement of the Law Governing Lawyers addresses the formation of the client-lawyer relationship, civil liability of lawyers, and legal malpractice.

HORNBOOKS, MONOGRAPHS AND TREATISES

THE ATTORNEY-CLIENT PRIVILEGE IN CIVIL LITIGATION. Vincent S. Walkowiak, ed.,

(3rd ed.; Section of Litigation, American Bar Association 2004.)

KF 8959 .A7 A935 2004

THE CONSCIOUSNESS OF THE LITIGATOR. Duffy Graham. (University of Michigan

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THE LAW OF LAWYERING. Geoffrey C. Hazard, Jr., W. William Hodes. (3rd ed.; Aspen

Pub. 2001.)

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LAWYER DISQUALIFICATION: CONFLICTS OF INTERESTS AND OTHER BASES. Richard E.

Flamm (Banks and Jordan Law Pub. Co. 2003.)

KF 308 .F53 2003.

LAWYER LAW: COMPARING THE ABA MODEL RULES OF PROFESSIONAL CONDUCT WITH THE ALI RESTATEMENT (THIRD) OF THE LAW GOVERNING LAWYERS. Thomas Morgan. (Center for Professional Responsibility, American Bar Association 2005.)

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LAWYERS CROSSING LINES: NINE STORIES. James L. Kelley (Carolina Academic Press 2001.)
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THE LAWYERING PROCESS: ETHICS AND PROFESSIONAL RESPONSIBILITY. Gary Bellow and Bea Moulton (Foundation Press 1981.)
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LEGAL ETHICS IN A NUTSHELL. Ronald D. Rotunda and Michael I. Krauss (Thomson/West 2003.)
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REGULATION OF LAWYERS, STATUTES AND STANDARDS. Stephan Gillers, ed. (Little, Brown 1989 -)
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SURVEY OF LAWYER DISCIPLINARY PROCEDURES IN THE UNITED STATES (Center for Professional Responsibility, American Bar Association 1984 - .)
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THE PROFESSIONAL LAWYER, available at <http://www.abanet.org/cpr/proflaw.html>
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Craver, Charles B., *The Lawyer's Duties and Responsibilities in Dispute Resolution:
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ABA Litigation Section Program Materials: 2004 Section Annual Conference, available at <http://www.abanet.org/litigation/materials/2004sac.html> (Visited June 20, 2005.)

Please refer to *Black and White or Shades of Gray? Moral Perspectives on Lawyer Conduct in the Litigation Arena*. A valid ABA member ID is necessary to access this material.

American Arbitration Association, available at <http://www.adr.org/> (Visited June 20, 2005.)

This is a comprehensive site that provides access to current information about mediation, arbitration and other forms of alternative dispute resolution (ADR).

American Legal Ethics Library (Cornell’s Legal Information Institute), available at http://www.law.cornell.edu/topics/professional_responsibility.html (Visited June 21, 2005.)

The Ethics Department of the Center for Professional Responsibility, available at <http://www.abanet.org/cpr/home.html> (Visited June 20, 2005.)

The ABA’s Center for Professional Responsibility is the ABA’s ethics homepage and it offers a great deal of information about the ABA Ethical Canons, Code of Conduct, and Ethical Opinions. Links to reports, sanctions, and other invaluable information is available at this site.

Florida Bar Ethics Opinions, available at <http://www.flabar.org/tfb/TFBETOpin.nsf/EthicsIndex?OpenForm> (Visited June 20, 2005.)

This site provides access to the Florida Bar’s Rules Regulating Lawyer Conduct, Ethics Opinions, Standards for Lawyer Sanctions, and Advertising Rules. Many additional resources can be found at this site.

Florida Judicial Ethics Advisory Committee, available at <http://www.flcourts.org/> (Visited June 20, 2005.)

Florida Mediator, available at <http://floridamediator.blogspot.com/> (Visited June 20, 2005.)
Florida Mediator is a blog dedicated to Florida's Certified Mediators.

Legal Ethics .Com , available at <http://www.legalethics.com/> (Visited June 20, 2005.)
This site provides access to a wide range of ethical opinions and topics by state.

Legal Ethics Forum, available at <http://www.legalethicsforum.com/> (Visited June 20, 2005.)
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Updated by Roy Balleste, Lisa Smith-Butler & Carol Yecies, June 2005