MATERIALS ON
PROFESSIONAL RESPONSIBILITY

PROFESSOR SUNI
WINTER 2003

8 1997, 1999, 2000, 2001, 2003

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INTRODUCTION

These materials are for use in the course on Professional Responsibility. This section is an introduction both to these materials and to the course.

The goals of the course are four-fold:

1. To introduce you to professional responsibility issues and to assist you in recognizing such issues in situations lawyers face in practice,

2. To provide the tools necessary to resolve these issues, which include both knowledge of existing standards and an understanding of the underlying policies and concerns,

3. To assist you in developing your own personal sense of identity and role as an attorney, so that you can resolve "ethical" dilemmas and critically evaluate the standards which have been adopted by the profession, and

4. To prepare you to successfully complete the Multistate Professional Responsibility Exam (MPRE).

The first two goals are similar to the goals in any substantive law school course. Accordingly, parts of this course and these materials will resemble any other course you have taken. But the third goal is somewhat different, because, unlike other courses where you learn material and skills to assist clients in the pursuit of their goals, in this course you must deal with your own goals apart from the client's needs or wishes. It is this difference that causes many students to approach this course with skepticism, assuming that such goals are personal and "ethics" can't be taught. But there is a difference between one's own personal sense of ethics and morality and the professional responsibilities of an attorney. The first chapter focuses on that difference, and what it means for us as attorneys.

The remainder of these materials address issues of professional conduct and regulation. The course focuses on the Model Rules of Professional Conduct to ensure that students have learned the relevant law by the time they have completed the course. A knowledge of these rules alone, however, is not enough. Throughout the course we will discuss how decisions about identity and role, coupled with suggested responses from the Rules and other relevant sources, can lead to resolution of professional responsibility problems that will not only avoid discipline but will also be acceptable to us as individuals and as attorneys. This is a major undertaking, but one of extreme importance.

CHAPTER I
THE LAWYER AS PROFESSIONAL:
CONFLICTING OBLIGATIONS, CONFUSING ROLES

I. THE ROLE OF LAWYER: WHO ARE WE? WHO AM I?

Before reading the following materials, think briefly about why you chose to become a lawyer. What do you want from your professional career? What are your goals and expectations?

Then think about what is expected of you. To whom do you have obligations, and what are they? Are all these obligations consistent, or do they conflict? As an attorney, what role do you play vis-a-vis your clients, the courts and the Asystem?@ How will you and your role be perceived by non-lawyers, and are you prepared to deal with that image?

Lawyer and Client:
Personal Responsibility
In a Professional System

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[1] From *Ethics and Advocacy*, *Final Report of the Earl Warren Conference*, The Roscoe Pound-American Trial Lawyers Foundation (1978). **8** Roscoe Pound Foundation, reprinted with permission.

It is a singularly good thing, I think, that law students, and even some lawyers and law professors, are questioning with increasing frequency and intensity whether "professionalism" is incompatible with human decency - asking, that is, whether one can be a good lawyer and a good person at the same time. I have a special interest in that question because Professor John T. Noonan, Jr. (a personal friend, perceptive critic, and a previous speaker in this annual series) has drawn the inference from my book that I do not believe that a decent, honest person can practice criminal law or teach others to do so.[2] In fact, the title of today's paper derives directly from a challenge issued to me in the concluding paragraph of Professor Noonan's review of my book, urging that I write on "Personal Responsibility in a Professional System. At the same time that I address the issue of professionalism and personal moral responsibility, I want also to discuss an integrally related question, one that is often expressed in terms of whether it is the lawyer or the client who should exercise control" in the relationship between them. As it is frequently put: Is the lawyer just a "hired gun," or must the lawyer Aobey his own conscience, not that of his client"? Voicing a viewpoint prevalent in the profession, lawyers sometimes use the phrase "client control" (that is, control of the client by the lawyer) in expressing their professional pride in maintaining the proper professional relationship. In a law school commencement address titled "Professionalism in Lawyering," the Chief Judge of a federal court of appeals, Clement F. Haynsworth, stressed the importance of professional competence in handling a client's affairs; but, Chief Judge Haynsworth went on to say that of even "greater moment" than competence on the part of a lawyer is the fact that

> he serves his clients without being their servant. He serves to further the lawful and proper objective of the client, but the lawyer must never forget that he is the master. He is not there to do the client's bidding. It is for the lawyer to decide what is morally and legally right, and, as a professional, he cannot give in to a client's attempt to persuade him to take some other stand.... [T]he lawyer must serve the client's legal needs as the lawyer sees them. During my years of practice, . . . I told [my clients] what would be done and firmly

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2 Noonan, *Book Review*, 29 Stan. L. Rev. 363 (1977). Professor Noonan bases that inference, in substantial part, on my conclusion that a criminal defense lawyer will sometimes be compelled to knowingly present a client's perjury to the court and to argue it in summation to the jury. I base that conclusion on such considerations as the Sixth Amendment right to counsel, the Fifth Amendment privilege against self-incrimination, and the obligation of confidentiality, under which the attorney induces the client to reveal all relevant information with assurances that the attorney will not act upon that information in a way that will injure the client. Thus, I might ask rhetorically whether Professor Noonan believes that a good person can induce another to rely upon assurances of confidentiality, and then betray those confidences.

The difficulty, of course, is that the lawyer is frequently faced with conflicting moral obligations; here, either to participate knowingly in the presentation of perjury, or to violate the client's trust which the lawyer has induced (a problem that is discussed more fully in Freedman, *op. cit.* ch. 3). In view of that kind of moral dilemma, a cynic might conclude that one cannot be a good lawyer and a good person at the same time. I do not believe, however, that one can properly be charged with immorality because one is presented with a moral dilemma. If so, the human condition is one of guilt without realistic free will. On the contrary, however, I believe that, in such circumstances, the only immorality lies in failing to address and resolve the moral conflict in a conscientious and responsible manner.

rejected suggestions that I do something which I felt improper.

Surely those are striking phrases to choose to describe the relationship of lawyer and client - the lawyer is "the master" who is "to decide what is morally ... right," and who serves the client's needs but only "as the lawyer sees them, not as the client sees them." Even more striking was the phrase once used by Charles Halpern, a sensitive and dedicated public interest lawyer; as between the lawyer and client, he observed, it is the lawyer who holds "the whip hand.

Thurmond Arnold, who was a prominent practitioner and also a federal appellate court judge, held a philosophy similar to Judge Haynsworth's. As described with approval by former Supreme Court Justice Abe Fortas, Arnold did not permit a client "to dictate or determine the strategy or substance of the representation, even if the client insisted that his prescription for the litigation was necessary to serve the larger cause to which he was committed.@

Critics of the legal profession argue not that such attitudes and practices are elitist and paternalistic, but rather, that not enough lawyers abide by them. In an article on "Lawyers as Professionals: Some Moral Issues," Professor Richard Wasserstrom. recalls John Dean's list of those involved in the Watergate cover-up. Dean had placed an asterisk next to the names of each of the lawyers on the list, because he had been struck by the fact that so many of those implicated were lawyers. Professor Wasserstrom concludes that the involvement of lawyers in Watergate was "natural, if not unavoidable," the "likely if not inevitable consequence of their legal acculturation." Indeed, on the basis of Wasserstrom's analysis, the only matter of wonder is why so many of those on John Dean's list were not lawyers. What could possibly have corrupted the non-lawyers to such a degree as to have led them into the uniquely amoral and immoral world of the lawyers? "For at best," Wasserstrom asserts, "the lawyer's world is a simplified moral world; often it is an amoral one; and more than occasionally perhaps, an overtly immoral one."

Professor Wasserstrom holds that the core of the problem is professionalism and its concomitant, role-differentiated behavior. Role differentiation refers, in this context, to situations in which one's moral response will vary depending upon whether one is acting in a personal capacity or in a professional, representative one. As Wasserstrom says, the "nature of role-differentiated behavior ... often makes it both appropriate and desirable for the person in a particular role to put to one side considerations of various sorts - and especially various moral considerations - that would otherwise be relevant if not decisive."

An illustration of the "morally relevant considerations" that Wasserstrom has in mind is the case of a client who desires to make a will disinheriting her children because they opposed the war in Vietnam. Professor Wasserstrom suggests that the lawyer should refuse to draft the will because the client's reason is a "bad" one. But is the lawyer's paternalism toward the client preferable - morally or otherwise - to the client's paternalism toward her children?

We might all be better served," says Wasserstrom, "if lawyers were to see themselves less as subject to role-differentiated behavior and more as subject to the demands of *the* moral point of view." Is it really that simple? What, for example, of the lawyer whose moral judgment is that disobedient and unpatriotic children should be disinherited? Should that lawyer refuse to draft a will leaving bequests to children who opposed the war in Vietnam?

If the response is that we would then have a desirable diversity, would it not be better

to have that diversity as a reflection of the clients' viewpoints, rather than the lawyers'?

In another illustration, Wasserstrom suggests that a lawyer should refuse to advise a wealthy client of a tax loophole provided by the legislature for only a few wealthy taxpayers. If that case is to be generalized, it seems to mean that the profession can properly regard itself as an oligarchy whose duty is to nullify decisions made by the people's duly elected representatives. That is, if the lawyers believe that particular clients (wealthy or poor) should not have been given certain rights, the lawyers are morally bound to circumvent the legislative process and to forestall the judicial process by the simple device of keeping their clients in ignorance of tempting rights.

Nor is that a caricature of Wasserstrom's position. The role-differentiated amorality of the lawyer is valid, he says, "only if the enormous degree of trust and confidence in the institutions themselves [that is, the legislative and judicial processes] is itself justified." And we are today, he asserts, "certainly entitled to be quite skeptical both of the fairness and of the capacity for self-correction of our larger institutional mechanisms, including the legal system." If that is so, is it not a non sequitur to suggest that we are justified in placing that same trust and confidence in the morality of lawyers, individually or collectively?

There is "something quite seductive," adds Wasserstrom, about being able to turn aside so many ostensibly difficult moral dilemmas with the reply that my job is not to judge my client's cause, but to represent his or her interest. Surely, however, it is at least as seductive to be able to say, "My moral judgment - or my professional responsibility - requires that I be your master. Therefore, you will conduct yourself as I direct you to."

A more positive view of role-differentiated behavior was provided in an article in the *New York Times* about the tennis star, Manuel Orantes:

> He has astounded fans by applauding his opponent's good shots and by purposely missing a point when he felt that a wrong call by a linesman has hurt his opponent.
>
> "I like to win," he said in an interview, "but I don't feel that I have won a match if the calls were wrong. I think if you're playing Davis Cup for your country it might be different, but if I'm playing for myself I want to know I have really won."

That is, one's moral responsibilities will properly vary depending, among other things, upon whether one has undertaken special obligations to one's teammates or to one's country.

Taking a different illustration, let us suppose that you are going about some pressing matter and your arm is suddenly seized by an old man with a long, gray beard, a wild look in his eye, and what appears to be an enormous dead bird hanging around his neck, and he immediately launches into a bizarre tale of an improbable adventure at sea. If he is a stranger and you are alone on a poorly lighted street, you may well call the police. If he is a stranger but you decide that he is harmless, you may simply go on to your other responsibilities. If he is a friend or member of your family, you may feel obligated to spend some time listening to the ancient mariner, or even to confer with others as to how to care for him. If you are a psychiatric social worker, you may act in yet some other way, and that action may depend upon whether you are on duty at your place of employment, or hurrying so that you will not be late to a wedding - and, in the latter case, your decision may vary

depending upon whether the wedding is someone else's or your own. Surely there can be no moral objection to those radically different courses of conduct, or to the fact that they are governed substantially by personal, social, and professional context - that is, by role--differentiation. One simply cannot be expected, in any rational moral system, to react to every stranger in the same way in which one may be obligated to respond to a member of one's family or to a friend.

Thus, in an interesting and thought-provoking article, Professor Charles Fried has analogized the lawyer to a friend - a "special-purpose" or 'limited-purpose" friend "in regard to the legal system.@ The lawyer, thereby, is seen to be "someone who enters into a personal relation with you - not an abstract relation as under the concept of justice." That means, Fried says, that "like a friend, [the lawyer] acts in your interests, not his own; or rather, he adopts your interests as his own.@

The moral foundation on which Fried justifies that special-purpose friendship is the sense of self, the moral concepts of "personality, identity, and liberty.@ He notes that social institutions are so complex that, without the assistance of an expert adviser, an ordinary lay person cannot exercise the personal autonomy to which he or she is morally and legally entitled within the system. "Without such an adviser, the law would impose constraints on the lay citizen (unequally at that) which it is not entitled to impose explicitly." The limited purpose of the lawyer's friendship, therefore, is "to preserve and foster the client's autonomy within the law.@ Similarly, Professor Sylvia A. Law has written: "A lawyer has a special skill and power to enable individuals to know the options available to them in dealing with a particular problem, and to assist individuals in wending their way through bureaucratic, legislative or judicial channels to seek vindication for individual claims and interests. Hence, lawyers have a special ability to enhance human autonomy and self-control." She adds, however, that "far too often, professional attitude, rather than serving to enhance individual autonomy and self-control, serves to strip people of autonomy and power. Rather than encouraging clients and citizens to know and control their own options and lives, the legal profession discourages client participation and control of their own legal claims."

The essence of Professor Fried's argument does not require the metaphor of friendship, other than as an analogy in justifying the lawyer's role-differentiation. It was inevitable, however, that Fried's critics would give the metaphor of friendship the same emphasis that Fried himself does and, thereby, consciously or not, miss the essential point he makes that human autonomy is a fundamental moral concept that must determine, in substantial part, the answers that we give to some of the most difficult issues regarding the lawyer's ethical role.

Thus, in a response to Fried, Professors Edward A. Dauer and Arthur Allen Leff make some perceptive and devastating comments about the limited-purpose logic of Fried's metaphor of friendship. At the same time, however, Dauer and Leff express their own views of the lawyer's role and character, views which I find to be both cynical and superficial. An "invariant element" of the lawyer-client relationship, they see as follows:

> The client comes to a lawyer to be aided when he feels he is being treated, or wishes to treat someone else, not as a whole other person, but (at least in part) as a threat or hindrance to the client's satisfaction in life. The client has fallen, or wishes to thrust someone else, into the impersonal hands of a just and angry bureaucracy. When one desires help in those processes whereby and wherein people are treated as means and not as ends, then one comes to lawyers, to us. Thus, if you feel the need for a trope to express what a lawyer largely is, perhaps this will do: A lawyer is a person who

on behalf of some people treats other people the way bureaucracies treat all people - as nonpeople. Most lawyers are free-lance bureaucrats. . . . A

Despite that caricature, Dauer and Leff manage to conclude that Aa good lawyer can be a good person.@ They do so, however, by defining 'a good person' in the following limited terms: "In our view the lawyer achieves his "goodness" by being professionally - no rottener than the generality of people acting so to speak, as amateurs.@

The best that can be said for that proposition, I believe, is that it is not likely to stop students with any moral sensitivity from continuing to ask whether it is indeed possible for a good lawyer to be a good person.

The most serious flaw in Professor Fried's friendship metaphor is that it is misleading when the moral focus is on the point at which the lawyer-client relationship begins. Friendship, like love, seems simply to happen, or to grow, often in stages of which we may not be immediately conscious. Both in fact and in law, however, the relationship of lawyer and client is a contract, which is a significantly different relationship, formed in a significantly different way.[3]

Unlike friendship, a contract involves a deliberate choice by both parties at a particular time. Thus, when Professor Fried says that friendship is "an aspect of the moral liberty of self to enter into personal relations freely," the issue of the morality of the decision to enter the relationship is blurred by the amorphous nature in which friendships are formed. Since entering a lawyer-client contract is a more deliberate, conscious decision, however, that decision can justifiably be subjected to a more searching moral scrutiny.

In short, a lawyer should indeed have the freedom to choose clients on any standard he or she deems appropriate. As Professor Fried points out, the choice of client is an aspect of the lawyer's free will, to be exercised within the realm of the lawyer's moral autonomy. That choice, therefore, cannot properly be coerced. Contrary to Fried's view, however, it can properly be subjected to the moral scrutiny and criticism of others, particularly those who feel

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[3] It is interesting to note that contract plays such a major role as a construct in political theory and in jurisprudence, but is overlooked in discussions of lawyer-client relations. Let me hasten to add, however, that I am not suggesting "The Lawyer as Contractor" as an all-purpose analogy. It is relevant to the question of the lawyer's personal moral responsibility in selecting (and rejecting) clients, but it may well be useless in other contexts.

morally compelled to persuade the lawyer to use his or her professional training and skills in ways that the critics consider to be more consistent with personal, social, or professional ethics.[4]

[4] Such critics might be answered on the grounds that everyone is entitled to representation, but that response is not conclusive as long as there is, in fact, another lawyer who is willing to take the case.

As I have stressed elsewhere, however, once the lawyer has assumed responsibility to represent a client, the zealousness of that representation cannot be tempered by the lawyer's moral judgments of the client or of the client's cause. That point is of importance in itself, and is worth stressing also because it is one of the considerations that a lawyer should take into account in making the initial decision whether to enter into a particular lawyer-client relationship.[5]

In disagreeing with Professor Wasserstrom's criticism of role-differentiation, I did not mean to suggest that role-differentiation has not produced a degree of amorality, and even immorality, into the practice of many lawyers. The problem, as I see it, is expressed in the news item I quoted earlier regarding Manuel Orantes. Playing for himself, Mr. Orantes has earned an enviable reputation, not only for his athletic prowess, but also for his good sportsmanship - if you will, for his morality in his relations with his adversaries. Yet when he plays with teammates and for his country, he adopts different standards of conduct.

I think that Mr. Orantes is wrong in a way that many lawyers frequently are wrong. I do not mean that in Davis Cup play he is not bound by special, voluntarily assumed obligations to others. On the contrary, he is bound by his role as teammate and countryman to accept the decision of his teammates, which may well be that each player should play to win, without relinquishing any advantage that the rules of the game and the calls of the judges allow. Where Orantes is wrong, however, is in preempting that decision, in assuming that their decision is that winning is all. Perhaps if he actually put the choice to them, Orantes' teammates would decide that they would prefer to achieve, for themselves and for their country, the kind of character and reputation for decency and fairness that Orantes has earned for himself. Perhaps they would not decide that way. The choice, however, is theirs, and it is a denial of their humanity to assume the less noble choice and to act on the assumption without consultation.

In day-to-day law practice, the most common instances of amoral or immoral conduct by lawyers are those occasions in which we preempt our clients' moral judgments. That occurs in two ways. Most commonly we assume that our function is to maximize the client's position - the client's material or tactical position, that is - in every way that is legally permissible. Since it is our function not to judge the client's cause, but to represent the client's interests, we tend to assume the worst regarding the client's desires. Much less frequently, I believe, a lawyer will decide that a particular course of conduct is morally preferable, even though not required legally, and will follow that course on the client's behalf.

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5 See Law, *op. cit.,* at pp. 213-214. It is possible, of course, that a client will decide upon a course of conduct, not foreseeable as a possibility at the outset of the lawyer-client relationship, that is so morally repugnant to the lawyer as to make it impossible for the lawyer to continue without a serious personal conflict of interest. In that event, the lawyer is permitted to withdraw, but only upon taking reasonable steps to avoid foreseeable prejudice to the client's rights.

In either event, the lawyer fails in his or her responsibility to maximize the client's autonomy by providing the client with the fullest advice and counsel, legal and moral, so that the client can make the most informed choice possible.

Let me give a commonplace illustration. Two experienced and conscientious lawyers, A and B, once asked me to help them to resolve an ethical problem. They represented a party for whom they were negotiating a complex contract involving voluminous legal documents. The attorneys on the other side were insistent upon eliminating a particular guarantee provision, and A and B had been authorized by their client to forego the guarantee if the other side was adamant. The other lawyers had overlooked, however, that the same guarantee was provided elsewhere in the documents, more broadly and unambiguously stated. Having agreed to eliminate the guarantee provision, with specific reference to a particular clause on a particular page, were A and B obligated to call the attention of opposing counsel to the similar clause on a different page? Or, on the contrary, were they obligated, as A put it, "to represent our client's interest, rather than to educate the lawyers on the other side?" Each of the lawyers was satisfied that, if he were negotiating for himself, he would unquestioningly point out the second guarantee clause to the other party. Moreover, each of them was more attentive to, and concerned about, questions of professional responsibility than most lawyers probably are - each of them, that is, was highly sensitive to the question of personal responsibility in a professional system. Yet it had occurred to neither of them that their professional responsibility was not to resolve the issue between themselves, but rather to present the issue to the client for resolution .[6]

Our discussion thus far has related to decisions that are clearly in the moral or ethical realm. What of tactical decisions? Are those significantly different and therefore within the lawyer's ultimate control?

At one time I had the notion, based on fantasy, that Alger Hiss had no involvement with Whittaker Chambers' nefarious activities, but that Hiss= wife did. Assuming such a case, imagine Mr. Hiss' lawyer advising him that the only way to defend himself would be to tell the

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[6] Moreover, that attitude does not appear to be the result of what Professor Wasserstrom refers to as the "acculturation" of legal training and practice. I have used that illustration and others like it as classroom problems early in the first semester of the first-year Contracts course and, consistently, students who have had minimal exposure to the corrupting influence of law school, and no experience at all as practitioners, assume that the lawyer's proper function is to preempt the client's moral decision. As indicated by that response, and by other student responses to problems of lawyer's ethics, law teachers have a moral role to perform as an essential part of their professional responsibilities. Cf. Freedman, "*Teaching Legal Ethics in the Contracts Course*," 21 JOUR. OF LEG. ED. 569 (1969).

truth about his wife's involvement, and Hiss replying that, in no way, directly or indirectly, was his wife to be brought into the case, even if it meant an erroneous conviction for himself. In those circumstances, I find it hard to believe that even Clement Haynsworth or Thurmond Arnold would insist upon conducting the case in such a way as to implicate the client's wife.

Arguably, however, that case represents a moral decision rather than a tactical one. On the one hand, there is the client's love for and loyalty to his wife. On the other, there is the possibility of a wrongful conviction, and the likelihood that the client will give misleading, or even false, testimony in the effort to avoid implicating his wife.[7]

I suspect, in fact, that the real reason lawyers prefer to make the final decision, and judges are inclined to give it to them, is professional pride, with the emphasis on the word pride. That is, the lawyer does not want the judge or any colleagues present to think that he or she is so unskilled as to have called a witness who is so vulnerable to cross-examination. Insofar as the lawyer's response would be that the lawyer's real concern is with the client's welfare, I think it is another instance of misplaced paternalism.

Conclusion

One of the essential values of a just society is respect for the dignity of each member of that society. Essential to each individual's dignity is the maximization of his or her autonomy or, as Pope John expressed it, "the right to act freely and responsibly ... acting

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[7] Compare, however, the report of a murder-kidnap trial of a group of Hanafi Muslims. According to the Washington Post, "The defendants are determined to share the guilt for crimes they may not have committed as a gesture of loyalty to their leader and belief in their faith."The *Post* quotes a defense attorney as saying, "They are willing to go down the tube for a principle."

Despite their clients' strong desires, which were based in part on religious conviction, the lawyers apparently intended to put on affirmative evidence and conduct adversary cross-examination of the group's leader (who is a codefendant). The *Post* further reported that the lawyers believed themselves to be acting in accordance with their "duty" to provide what they think is the best defense possible, "even though they are acting contrary to their clients' instructions." Further, the lawyers appear to have been encouraged in that view by the Bar Counsel of the District of Columbia Bar. *Washington Post,* July 10, 1977, at Al, Col. 1.

chiefly on his own responsibility and initiative [and] ... on his own decision."

In order to exercise that responsibility and initiative, each person is entitled to know his or her rights against society and against other individuals, and to decide whether to seek fulfillment of those rights through the due processes of law.

The lawyer, by virtue of his or her training and skills, has a legal and practical monopoly with respect to access to the legal system and knowledge about the law. Legal advice and assistance are often indispensable, therefore, to the effective exercise of individual autonomy.

Accordingly, the attorney acts both professionally and morally in assisting clients to maximize their autonomy, that is, by counseling clients candidly and fully regarding the clients' legal rights and moral responsibilities as the lawyer perceives them, and by assisting clients to carry out their lawful decisions. Further, the attorney acts unprofessionally and immorally by depriving clients of their autonomy, that is, by denying them information regarding their legal rights, by otherwise preempting their moral decisions, or by depriving them of the ability to carry out their lawful decisions.

Until the lawyer-client relationship is contracted, however - until, that is, the lawyer induces another to rely upon his or her professional knowledge and skills - the lawyer ordinarily acts entirely within the scope of his or her own autonomy. Barring extraordinary circumstances [for example, the obligation to represent someone who would otherwise be unrepresented], therefore, the attorney is free to exercise his or her personal judgment as to whether to represent a particular client. Since a moral choice is implicated in such a decision, however, others are entitled to judge and to criticize, on moral grounds, a lawyer's decision to represent a particular client.

Finally, those of us who teach law have a primary professional obligation to explicate the moral implications of the law in general and of lawyers' ethics in particular.

If we conscientiously carry out those personal and professional responsibilities, then I do believe that professionalism is consistent with decency, and I therefore conclude that one can indeed be a good lawyer and a moral person at the same time.

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1. Can a good lawyer be a good person? To what extent can (should) a lawyer put aside his or her own values in representing a client? Should a lawyer decline representation because he or she disagrees with the client? With the client's means? With procedures he or she must use to accomplish either?

Is it OK to be amoral as long as we're not immoral? Is it OK to pursue legal, but in your view immoral, ends of a client? Is there anything wrong in asking people with legal but (arguably) immoral aims to accomplish those aims themselves? Does it (should it) matter that there is likely to be less (or un-) ethical lawyers around-to do the client's bidding, and if done by those with a better sense of ethics, at least there is some hope for a better (more just) result?

Are these even appropriate concerns? Should we discuss the morality or "rightness" of goals and means with the client, or are we to address only the legal aspects of a client's affairs?

See MR. 2.1.

2. Consider the following principles set out by Professor Murray Schwartz in his article *The Professionalism and Accountability of Lawyers*, 66 CAL. L. REV. 669, 678 (1978):

Principle of Professionalism for the Advocate:

> When acting as an advocate, a lawyer must, within the established constraints on professional behavior, maximize the likelihood that the client will prevail.

Corollary Principle of Non-Accountability:

> When acting as an advocate for a client according to the Principle of Professionalism, a lawyer is neither legally, professionally, nor morally accountable for the means used or the ends achieved.

Professor Schwartz adopted these principles, which allow for extreme role-differentiated behavior, for the attorney acting in his or her role as an advocate within the adversary system. Should such principles apply to attorneys acting as advocates? Should they apply in other contexts as well (i.e. advising, counseling, negotiating)? Is there something about the adversary system, or acting as an advocate, which justifies such a rule in that context but not in others?

3. Has the growth of law as a business undercut the view of lawyers as professionals? Is this desirable? What problems arise from viewing lawyers as business people rather than professionals? What benefits? The ABA has been increasingly concerned with these issues, which lie at the core of the future of the Legal Profession. See ABA Commission on Professionalism, *In The Spirit of a Public Service: A Blueprint for the Rekindling of Lawyer Professionalism* (1986). This concern is also reflected in the adoption of two "Creeds of Professionalism" by the House of Delegates at the August 1988 Annual Meeting of the ABA. The first, proposed by the ABA Torts and Insurance Practice Section, contains thirty-three "credos" aimed at doing away with a "win at any cost" mentality and encouraging fairness in litigation. The second, proposed by the Young Lawyers Division, is a twelve statement "pledge of professionalism." Both of these statements were approved for wide dissemination, but are only, aspirational in nature. At least one court, however, has adopted standards of conduct which contain guidelines for 'professional courtesy directed at curbing abuses by lawyers in their dealings with each other. See *Dondi Properties Corp. v. Commerce Savings and Loan Ass'n*, 121 F.R.D. 284 (N.D. Tex. en banc 1988). Similar tenets of professional courtesy have been adopted by both the Young Lawyers Section of the Missouri Bar and the KCMBA.

Does the apparent increase in hard-ball tactics and decrease in courtesy and cooperation reflect an increase or a decrease in professionalism? Does it depend on how one defines professionalism? Is courtesy a professional value if it doesn=t advance the client=s interests? Or is collegiality and trust among lawyers a necessary part of professionalism regardless of the client=s interests? Do these apparent changes in behavior on the part of many lawyers reflect changes in the times that are beyond our control as attorneys (and that in fact merely mirror changes in business and personal relationships) or are these matters that the Bar can and should address?

There are obviously no right answers to these difficult questions, but issues of role, identity, professionalism, and acceptance of "the system" will continue to require consideration as we proceed through these materials.

II. PROFESSIONALISM*

Rethinking "Professionalism"

Timothy P. Terrell and James H. Wildman

Over the past few years, "professionalism" has been much on the minds of lawyers across the country. It is more than just a topic of conversation, however. "Professionalism" is now the accepted allusion to the Bar's ambitious struggle to reverse a troubling decline in the esteem in which lawyers are held -- not only by the public but also, ironically, by lawyers themselves. Being a lawyer, particularly one engaged in private practice, seems suddenly an embarrassment rather than a source of pride. The Bar's response, unaccustomed as it is to apologizing for its social role, has been predictably defensive and schizophrenic: members are usually reminded by their leaders that, as a group, lawyers really aren't as bad as people seem to think, but they are admonished nevertheless that the profession is threatened by a decline in common decency, attitudes, and standards. Not surprisingly, then, this confused message has led to little progress in reversing whatever negative trends lawyers perceive within the practice.

The legal profession's quandary can be summarized relatively easily: lawyers have sought a cure for a disease before agreeing on its nature, symptoms, and causes. We want to be happy in our professional lives without investigating seriously why many of us are unhappy. We want, in short, to moralize without examining our morals. Explaining this superficiality, however, is more difficult. Perhaps we are afraid of what we will find if we turn over the rock of lawyering and examine what lurks beneath. Or perhaps the problem is not with what we do as lawyers, but with our understanding of "professionalism."

The perspective of this Essay is that the concept of professionalism has become confused and disjointed because it has been diagnosed too hastily. A proper evaluation requires patience. It demands, for example, that we begin with fundamental points like, among others, the contrast between the profession's past and its present, and the changing demands society has placed on the legal system over the last half century. Once we have established a better foundation, the true substance of legal professionalism -- the values that make this nebulous concept worthy of our attention -- becomes much easier to identify. . . .

Part of the problem with the debate about legal professionalism is that the subject is a moving target. Both the legal profession and the law itself have changed dramatically over the past century, suggesting that any attempt to identify a single professional tradition or heritage may be fanciful. But this conclusion is too quick and reflects the kind of cynicism we must avoid. Instead, analyzing the changes in the profession gives us an appropriate and

* Most of this section is based on material from *Professional Responsibility Course Materials* by Professor Barbara Glesner Fines (Fall 1998).

very important historical perspective on the present struggle to define professionalism.

A. The Bar as a "Club"

One lesson that history reveals, not surprisingly, is that some of the cynicism about professionalism is justified. The heritage of Bar associations, like that of all trade organizations, rests initially in self-interest and protectionism rather than any noble spirit of public service. Our medieval predecessors established guilds to control competition, not to encourage it, and until relatively recently we happily continued that tradition. But before we leap to the conclusion that we should therefore condemn our past, we should realize two things: self-interest can in fact produce public benefits, and our history predicts much of the ambivalence with which we today approach professional ethics and professionalism.

A useful perspective from which to view the growth and popularity of professional associations is that of the economic theory of "clubs." This theory holds that social organizations even this informal do not arise by accident, but because they serve some purpose for their members. It would be a mistake to assume, however, as many do, that those purposes are essentially "negative" -- that is, to control behavior in ways that benefit that group but not the larger community (for example, to stifle competition). To the contrary, social groupings of this kind can in fact originate out of an interest to enhance economic efficiency, not avoid it.

The basic efficiency-enhancing feature that clubs can provide is predictability. In situations of great uncertainty -- where social circumstances are in flux or the nature and quality of a product are not readily apparent -- individuals with similar interests may organize to provide each other with consistent, comprehensible feedback, and to provide outsiders with a standard against which the members of the club might be assessed. The essential function of the group, consequently, is information . . . . [T]o serve this information function, club membership must mean something; but to mean something, clubs must in turn be able to exercise serious control over entry into the group and the behavior of their members. The danger here, of course, is that rigor and consistency can devolve into rigidity and stagnation, and the organization can destroy its social usefulness.

Bar associations are excellent examples of all the features economic theory predicts, not only concerning the early structure they exhibited, but also the current challenges they face. Regarding their past, Bar associations exhibited all the classic "negative" features of a closed club:

* Barriers to entry into the profession were serious. Before the advent of law schools, the only route available was apprenticeship to a current member of the Bar, and there were very few of them. They could in turn exercise idiosyncratic control over those they permitted to work for them . . . . [C]riteria could be much more socially and personally detailed, like one's race, class, religion, and so on. Later, once law schools became the principal place of initial legal education, entry was still difficult because of the expense involved . . . .

* Control over the decision to admit new members was tightly held by existing members, so that growth of the organization could be kept small and slow.

* Competition among members was kept within a very narrow range. Price- fixing, for example, was not only characteristic, it was rigidly enforced. Advertising anything other than club membership was similarly prohibited.

* Written codes of conduct, on the other hand, were consequently all but unnecessary. Because the members of this club were so similar to each other (virtually all drawn from the same social stratum, often closely interconnected with each other in the community, and so on), they shared very similar personal values concerning ethics and decorum.

The Bar associations of today provide a stark contrast. Indeed, the present struggle over the concept of professionalism is largely a function of the fact that each of these characteristics has not simply changed, it has been reversed:

* The only barriers to entry into the profession are the educational requirements imposed by law schools. An applicant's racial or other social background plays no serious role, and economic background is not nearly as relevant as it once was because of financial aid and low tuitions at state- funded institutions. Competition among law schools has even lowered the educational prerequisites to remarkably low levels.

* Control over admission to the Bar is still held by the Bar itself, but those making the decisions are a relatively small group faced with assessing a very large pool of applicants. Criteria are therefore non- personal and relatively objective: graduating from an accredited law school and passing a local Bar examination. Neither of these criteria, as it turns out, are particularly difficult to meet, and few applicants are therefore excluded because of them. The profession has consequently grown very rapidly.

* Anti-competitive controls, such as those on fees and advertising, are out, and competition is fully in. Legal services are therefore no longer a luxury available only to a small segment of society; such services are now widely available, and at competitively varying cost.

* Lack of limitation on entry has meant that the Bar has grown not only in number but in the diversity of its membership on every dimension: race, religion, gender, and (of specific interest here) sets of moral values. What was once understood or assumed concerning appropriate behavior no longer pertains generally. Instead, the standards that supposedly characterize the practice of law are vague, lack serious moral force, and are constantly being challenged or rethought.

Over the last half century, then, we have witnessed the fundamental transformation not only of the Bar, but concomitantly of the information conveyed by the simple fact of Bar membership. Where membership once signaled a host of impressions or expectations about the lawyer's personality, social background, fees, tasks that would be accepted, and so on, it now indicates much less. In other words, what was once akin to a priesthood may now be little more than a fan club. The question before us now, therefore, is whether this change is significant in any way. Specifically, has it had an impact on the practice of law or the concept of legal professionalism? It has, on both.

B. Five Consequences of the Breakdown of the "Club"

The transformation of the Bar from a close-knit community of colleagues to a large, diverse, competitive service industry has generated five important consequences for the practice of law.

1. Moral Diversity, Codes of Ethics, and Professionalism

In moving from moral clubishness to moral diversity, Bar membership could have become virtually meaningless. If no particular set of values could be ascribed to lawyers -- indeed, if the public could no longer ascribe any values at all to a lawyer that might limit or channel her conduct -- then being a member of the Bar would say very little of any significance to anyone. Neither lawyers nor non-lawyers would be able to predict the kind of interaction they would have with each other in professional contexts. This sad state of affairs would then be economically inefficient: without information, everyone would waste much of their time and energy protecting themselves from the unscrupulous, and trying to determine whom they could trust.

This extreme result has been avoided, however, by introduction of the Bar's self-generated and self-imposed codes of "professional ethics." The unique function of these sets of standards is to restore to Bar membership some basic but quite useful "moral information." In other words, despite the Bar's moral diversity and economic competitiveness, the codes announce a purported set of common values held by all Bar members. This in turn produces some level of predictability in one's interactions with lawyers: the public and other lawyers can now expect lawyers to do or not do some things in certain circumstances.

But those things and circumstances remain vague and limited. The rhetoric of these codes is often lofty, but they in fact enforce only minimum standards of behavior: sanctions are imposed only for the most egregious forms of misconduct. Thus, the "moral information" provided by the fact of Bar membership is really very small; indeed, so small as to form the irony underlying all the lawyer jokes currently so popular.

This, then, is where "professionalism" is supposed to enter the picture. Its function is to reach beyond the basic and uninspiring values enforced by the codes, and demonstrate that lawyers share, or ought to share, higher, more ambitious moral aspirations. Professionalism seeks to infuse into Bar membership the important moral information it currently lacks. But herein lies the basic problem that makes all discussions of professionalism so controversial and unsatisfying: in an era characterized by moral diversity and economic competitiveness, it is very difficult to discuss any "shared professional aspirations." The differences that separate us may simply be too vast.

But there is no reason to assume that moral diversity means we are left with moral nihilism. Quite the contrary, it means that the need to identify the essential elements of our shared professional heritage is greater than ever, for that perspective will give us an anchor for the inevitable debate about the profession's appropriate aspirations.

2. Increased Client Control

The effort to identify those aspirations faces another subtle challenge that is an outgrowth of the Bar's new moral diversity and sense of competitiveness. The popular image of the lawyer as an independent and objective counselor to whom a client could turn for dispassionate and, if necessary, unwelcome advice has eroded badly in recent years. . . . The pressure on lawyers today is to portray themselves as "can do" people, dedicated to making every possible effort to achieve the goals set by the client. This pressure has in turn redefined how lawyers relate to each other (and often how they portray each other to clients), and it has significantly altered the way lawyers relate to the legal system. Although legal codes of ethics insist that lawyers owe a loyalty to that system itself, the legal system often seems to be viewed today as simply one more tool to be manipulated as necessary in service to a client.

3. Expansion of "Rights-Consciousness"

The lawyer's changing relationship to the legal system has coincided with the public's changing perception of that system. The law is no longer viewed as a conservative social institution that reveres the past and is suspicious of change. Quite the contrary, the popular image of the law today is that of a dynamic social force that can, and should, vindicate the "rights" of citizens. Lawyers, as "can do" people, have done their part to foster this modern perspective, shifting much of the debate about the proper social role of law into "rights-talk." As a consequence, the client's expectation is that his lawyer will be as creative and dynamic as the new sense of the legal system suggests he should be. And given the transformations occurring within the Bar itself -- its moral diversity and the demands of competition -- there are no traditional conservative forces within the profession to hinder the continuation of this trend.

4. Challenges for the Judiciary

As both the Bar and the public have changed their approach to the legal system, a particularly daunting set of new challenges has arisen for the judiciary. Judges are lawyers with only the legal system itself as a client, and their unique responsibility is therefore to its proper functioning. But that duty can no longer be fulfilled simply by deciding legal issues in the way the public imagines judges do; instead, judges must now act as babysitters of the system's processes as well. Those processes have been strained by the use given the system by eager clients and their equally eager lawyers, and as diversity and competitiveness increase within the Bar, there is little consensus among litigators about limits they should impose on themselves. Judges, therefore, find themselves as the only serious source of guidance on the appropriate use of the courts in the service of clients. . . .

5. Changing Role of Law Schools

Law schools face a related challenge. They too have changed dramatically in both size and composition over the last half century, keeping pace with the increased demand for and interest in legal services. They have therefore been a major force in the move within the Bar toward moral diversity and economic competition, and furthermore, then, in the undermining of traditional impressions of the professional heritage of lawyers. The question, however, is whether law schools consequently have some special responsibility for reinvigorating the discussion of professionalism, and if so, what their effort should look like. It would be very easy for members of the Bar to cast special blame on law schools for the current moral predicament of lawyers -- and they often do -- claiming that the decline of professionalism is a function of a lack of academic interest in it: since it isn't taught early, it is never appreciated properly.

But this view assumes far too much. It assumes either that law professors know what professionalism is, and fail to teach it, or that they too are confused, and therefore avoid the matter. The truth, however, is probably more subtle: law schools do not focus much attention on the ideas that seem to be most popular in the current discussions of professionalism, not because they have failed to see their responsibility in this regard, but generally because they are not much impressed with the nature and substance of those ideas. Instead, by continuing to do what they do best -- focusing on the rigorous examination of legal rules and principles -- law schools are probably doing a good job of teaching (albeit implicitly and accidentally) the basic values that should be related to professionalism, an argument we will complete in later sections of this Essay. They would do better, however, to acknowledge those values more forthrightly.

C. Minimum Points of "Procedural" Agreement Concerning Professionalism

But for law schools or Bar associations or anyone else to acknowledge and preach the values of professionalism, lawyers must first agree on the nature and substance of the sermon. This is particularly difficult, as we have seen, in the context of a profession whose heritage has apparently changed significantly over the last half century, and is still evolving. We tackle in the next section of this Essay the task of identifying what we believe are the essential substantive values of legal professionalism; here, however, we seek to identify a few less controversial "procedural" aspects of professionalism with which we believe all lawyers, despite much disagreement on substance, would nevertheless agree.

By "procedural" we mean the scope and purposes within the legal profession of the values of professionalism whatever the substance of those values turns out to be. We believe there are three such propositions that lie behind all discussions of professionalism: the universality of its values, its relevance to the practice of law, and certain general functions it performs within the Bar.

1. Universality

We would argue that all lawyers believe that, if "professionalism" exists, then it applies to all lawyers and all areas of the practice of law, not to some smaller group within the Bar. . . .

2. Relevance

As a second point of "procedural" agreement, we believe all lawyers accept the idea that some set of special demands is made on them -- which we now characterize as "ethics" and "professionalism" -- even if their substance remains controversial. . . .

3. Functions

Despite an inevitable focus on actions rather than attitudes, the demands of professionalism, whatever they may be in detail, serve two functions that can have an impact on attitudes. First, if it were well-defined, professionalism would help the Bar attract people to the profession who already have the values we hope will continue within it. This could in turn have both positive and negative effects: on the one hand, it would allow experienced lawyers to save the time involved in preaching those values to new entrants; on the other, that "saved" time would be a loss to the profession's sense of its heritage, and therefore to professionalism. Second, again if it were well-defined, professionalism would announce to all new entrants into the profession that the Bar's contemporary moral diversity and competitiveness, while consistent with the minimal standards of the Model Code and Model Rules, nevertheless have their limits. In other words, some aspirational, professional values would be expected to be held by each lawyer regardless of his or her personal proclivities or desires.

The central issue in the professionalism debate, then, becomes: What are those values or aspirations that we must all share?

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The authors of this article suggest some answers to their questions of shared

values of professionalism. Try your hand at answering this question for yourself. What are some of the basic values that all attorneys share?

CHAPTER II
PROFESSIONAL REGULATION

As we have seen in Chapter I, lawyers, by virtue of their position, may be entitled (and perhaps required) to act for clients in ways which might not be morally acceptable if not acting in such capacity. How far, however, can lawyers go? How far should they go? The possible answers deriving from perceptions of role were addressed in Chapter I. This Chapter will address the more formal constraints on attorney conduct.

There are many sources of "law" governing conduct by attorneys. As citizens, attorneys are subject to the "positive" law of the jurisdictions in which they practice. Thus, in some instances, criminal statutes relative to perjury, conflict of interest and related matters must be consulted. Court and agency rules of practice, procedure and evidence may provide guidance as well. In addition, some guidance may be found in court decisions in malpractice, disqualification, and ineffective-assistance of-counsel cases.

The primary source of guidance for attorneys, however, is found in the rules developed by the Bar. Those rules are currently embodied in the Model Rules of Professional Conduct. The Model Rules were initially adopted by the ABA in 1983 to supersede the Code of Professional Responsibility, which had been adopted in some form in 49 states. The Model Rules have been adopted in the large majority of states (although a few states have explicitly rejected them), and they were adopted in Missouri effective January 1, 1986. The Rules contain "black letter" rules and commentary. The Code was written by the American Bar Association in 1969 to replace the then existing Canons of Professional Ethics. The Code is divided into three parts: Canons, Disciplinary Rules and Ethical Considerations. Neither the Rules nor the Code provide sanctions for violation of its proscriptions. These are left to the courts which supervise enforcement.

Recently, a Commission (commonly called Ethics 2000) completed study of possible revisions to the Model Rules and recommended numerous changes to those Rules. The ABA House of Delegates adopted many of the changes at its midyear meeting in February 2002. For a summary of the ABA=s action on the proposed rules, see http://www.abanet.org/cpr/e2k-summary_2002.html. We will be studying both the 2001 (which are still in effect in many jurisdictions) and the 2002 Rules, and both can be found in the Standards Supplement. A Missouri Bar committee is currently studying the changes to determine whether they should be adopted in Missouri.

At this point, read through the Model Rules to get a sense of their structure and approach. It may also be desirable to compare the structure of the Rules to that of the Code.

The Code was heavily criticized since its inception on many grounds, among them its failure to set out guiding principles, its inability to provide any real guidance to lawyers in making difficult decisions, its failure to take into account the realities of present day law practice, and its over-protectiveness of lawyers. The Model Rules were drafted in an attempt to meet these criticisms, but, partly as a function of compromises during the adoption process, there is some question as to whether this effort was successful.

1. Why should we have a code of professional conduct? What purposes should it

serve? Whose interests should it protect? What principles should be reflected, and how should these be prioritized? What are the priorities reflected in the current Rules? Can you identify the prioritization of principles? Is it consistent? If not, why not? How should it be changed?

2. Who should regulate lawyers? The profession? The state? The judiciary? Consumers of legal services? Some combination of the above? Who regulates other trades and professions? Is there anything unique about law which requires a particular form of regulation?

3. Whose values should a professional code reflect? Can a code of conduct be ethically neutral? Should it? If not, whose ethics and values should be embodied therein? Can one code of conduct govern the practice of law in diverse settings by diverse groups of professionals? If it must, must we insure representation by the many factions within the Bar in the drafting of such a code? Is a code drafted by the organized Bar necessarily a "political" document?

4. How specific should a code be? Should it be a collection of "do's" and "don't's" or a document to "sensitize lawyers to the scope, depth and complexity of the commitments that they have undertaken in entering the profession" and to act as "a catalyst for a continuing discourse on the profession's raison d=etre?" See Frankel, *Book Review, Code of Professional Responsibility,* 43 U. Chi. L. Rev. 874 (1976). Should it be a document reflecting and rationalizing the underlying principles of the profession? Should it be aspirational, or merely set lower limits of conduct? What are the costs and benefits of either approach?

5. Where can attorneys go for guidance if the Code or Rules are not crystal clear in their resolution of a professional responsibility problem? There are several sources of help for attorneys with professional responsibility problems, although a necessary first step is consulting the Code or Rules.

The Code or Rules are not applicable in a jurisdiction until adopted by the appropriate governmental body. They are generally adopted by the highest court in a state as a court rule (in Missouri, as Rule 4 of the Rules Governing The Missouri Bar and the Judiciary), and decided cases can be found through the annotated rules. These cases may provide more definitive interpretations of the relevant rules and generally have precedential value.

The American Bar Association and local bar committees issue opinions which are advisory only and are not binding on the courts. They are often referred to and relied on in court opinions, however. The ABA Standing Committee on Ethics and Professional Responsibility will respond to requests for interpretations of the Rules in formal or informal ethical opinions. Formal opinions are issued on questions of wide significance, whereas informal opinions tend to respond to more specific problems. Both formal and informal opinions of the ABA committee are published. The ABA opinions and those of many states and local bars are available in the ABA/BNA Manual, and many are available on-line. In addition, summaries of recent formal ethics opinions can be found at http://www.abanet.org/cpr/ethicopinions.html. Missouri Informal Opinions are available on-line in searchable format at http://www.mobar.net/opinions/index.htm.

In Missouri, Supreme Court Rule 5.30 provides as follows:

OPINIONS AND REGULATIONS BY ADVISORY COMMITTEE

> (a) The advisory committee may give formal opinions as to the interpretations of Rules 4, 5, and 6, and the amendments or additions thereto and may make regulations consistent therewith for the administration of Rules 4, 5, and 6. Formal opinions and regulations of the advisory committee shall be published in the Journal of The Missouri Bar after adoption thereof.
> (b) The chief disciplinary counsel or any member of the bar who is substantially and individually aggrieved by any formal opinion of the advisory committee may petition this Court for review of the opinion. The Court in its discretion may direct that the petition be briefed and argued as though a petition for an original remedial writ has been sustained, may sustain, modify or vacate the opinion, or may dismiss the petition.
>
> (c) The ethics counsel on behalf of the advisory committee on request may give a member of the bar an informal opinion on matters of special concern to the lawyer. Informal opinions are not binding. Written summaries of informal opinions may be published for informational purposes as determined by the advisory committee.

(Adopted June 1995; amended September 2002, effective Jan. 1, 2003)

In addition to Ethical opinions and decided cases, attorneys with professional responsibility problems should determine whether guiding rules (either mandatory or advisory) exist for the particular type or area of practice in which they are involved. see, e.g., ABA Standards Relating to the Administration of Criminal Justice: Prosecution and Defense Functions (guidelines); American Academy of Matrimonial Lawyers, *Bounds of Advocacy* (1991)(guidelines); S.E.C. Rule of Practice 2(e), 17 C.F.R. ' 201.102(e)(mandatory rule). Samples of some of these specialized rules are found in the Standards Supplement at 1131.

An important new resource is the Restatement of the Law Governing Lawyers, which was recently adopted by the American Law Institute. The Restatement is becoming an important source of guidance for lawyers on professional responsibility issues. It can be found in the Standards Supplement and should be consulted regularly as part of your reading for the course. In addition, relevant cases and articles can be found using the ABA/BNA Manual on Lawyer's Professional Conduct and the ABA=s Annotated Model Rules of Professional Conduct. Much helpful information can also be found on the ABA=s Center for Professional Responsibility website, which can be accessed at http://www.abanet.org/cpr. Finally, assistance in researching professional responsibility issues can be obtained from Professor Glesner Fine=s website at http://www.law.umkc.edu/faculty/profiles/glesnerfines/bgf-13.htm.

If research efforts fail and an advisory opinion is impracticable, an attorney should discuss the problem with other reputable lawyers (taking care, of course, to preserve confidentiality [see Model Rules (2002), Rule 1.6(b)(2)]). In addition to hopefully getting sound advice, this will help to establish a good faith attempt at proper resolution of the problem should disciplinary action ultimately ensue.