

Law of Lawyering Outline

Model Rules: Origins and Evolutions, Plus Other Topics

- 1908—Canons of Ethics—terse, simple, and vague/incomplete
- 1969—Model Code—DRs=disciplinary rules; ECs=aspirational nonbinding commentary
- 1977—ABA sets out to revise
 - 1983—Model Rules are born.
 - Rules: disciplinary rule, can be enforced
 - Comments: nonbinding, but informative
- 2000—E2K
- 2013—intermediate tweaking of rules, “Ethics 2020”
- Now: ABA is looking at changes to advertising

Current Model Rules

- Most states keep current with ABA amds to Model Rules, but a few state's rules are worded exactly same as ABA, and authorities in a state may interpret the same rule differently than the ABA or another state
- Some states adopted the MRs but with significant changes (GA)
- Two main components to rules: Rules and Comments
 - Rule 1.0—definitions, Preamble ¶ 14 and 15—shall and may difference
 - Ex: if rule says L who knows confidential info may reveal it to save life, L does not have to reveal it
- Most rules: (1) prohibition; (2) exception. Eg the general rule is that an L who knows C's confidential info can't reveal it, with some *permitted* and a few *required* exceptions (may or shall). If it is not permitted or req'd and the L reveals confidential info, L is subject to discipline
- Comments and Preamble ¶ 21
 - “Should” and Preamble ¶ 14—aspirational
 - Importance of comments in MPRE: if rule says “must” but comment says “should,” the comments turn “should” into “must”—cmnts are more important

How to Read Rules/Comments

- First: Text of Rule, Preamble ¶ 14,15,18
- Then: Comments: comment structure (see cmnts to MR 1.6 and 1.7)
- And: state and local bar assoc's issue opinions on state rules, ABA committee issues opinions on MRs, Restatement and Law Governing Lawyers. Court and bar decisions contain grievances, disqualifications (DQs), exclusions of evidence, sanctions

Structure of MRs

- 1. C-L relationship; 2. Counselor; 3. Advocate; 4. Transactions with non-Cs; 5. Law firms and assoc's; 6. Public service; 7. Info about legal services (ads); 8. Maintaining profession's integrity

Rules Applied or Interpreted in Different Context

- Rules are for discipline arising from grievance, which is: discipline does NOT require damage to C, but malpractice DOES
- Preamble ¶ 20: violation of rule does not itself give rise to claim nor create presumption that legal duty was breached, but b/c rules establish a “standard of care,” a violation can show a breach of duty, in for ex. a malpractice case against L

The Law Of Lawyering

Geoffrey C. Hazard, W. William Hodes

The Law Of Lawyering:

The Law of Lawyering Geoffrey C. Hazard (Jr.), 1985 **Law of Lawyering** Hazard, Hodes, Jarvis, The Law of Lawyering shows how to approach concrete problems that arise in everyday practice while staying within the letter and spirit of the ABA Model Rules of Professional Conduct. It provides the full text of each Model Rule provision in sequence followed by the authors' guidance and commentary which put the rule into context, help identify its key features and show its relation to other Rules and the ALI's Restatement of the Law Governing Lawyers. Clear, realistic examples demonstrate how each Rule applies in practice. Substantially revised in this two volume Fourth Edition to reflect the recent revisions of the Model Rules of Professional Conduct, this essential book reflects the latest developments in the law governing lawyer conduct not only lawyer discipline but also legal malpractice suits for breach of fiduciary duty, fee dispute, litigation and fee forfeiture and disqualification of counsel for conflict of interest **The Law of Lawyering** Geoffrey C. Hazard, W. William Hodes, 2001

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