

THE LAW OF LAWYERING

By

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Reprinted from *Bench & Bar of Minnesota* (October 1987)

"The Law of Lawyering" is an apt title not only for a new handbook on the Model Rules of Professional Conduct.^{[Ftn 1](#)} The law and the literature about lawyering have burgeoned in the last few years. This article describes the wealth of excellent resources now available for attorneys who are confronted with, or just interested in, professional responsibility and other lawyering questions.

The Law of Lawyering is the best commentary on the Rules of Professional Conduct. It is a 900-page loose-leaf commentary on the Rules. Each rule is the subject of an overview, comments, illustrative cases, and supplementary authorities. One of the authors, Geoffrey Hazard, was reporter to the ABA Commission that drafted the Model Rules.

The *ABA/BNA Lawyers Manual on Professional Conduct* has a wider focus than *The Law of Lawyering* and is kept more current through biweekly advance sheets. The *Manual* includes a separate volume of indexed ethics opinions from various jurisdictions. It also reports on developments in malpractice law, attorney fee rights, disqualification law, and many other subjects of interest. New ethics opinions and law review articles are also given attention. A recent index includes such entries as, "Criminal Representation," "Mitigating Factors," "Multiple Representation," "Termination of Attorney-Client Relationship," and "Ineffective Assistance of Counsel."

The first issue of *The Georgetown Journal of Legal Ethics* was published this summer. The first issue contains several interesting articles, including one discussing the duty owed by an attorney to a person who is not a client, when the attorney's client has a fiduciary obligation to the third person. The author discusses the lawyer's duty to a ward when the guardian is the client, and to a corporation when the officer is a client. Another article discusses "vicarious disqualification" of a law firm because of the conflict of one of its members.

Modern Legal Ethics^{[Ftn 2](#)} is an excellent, comprehensive hornbook on lawyering. Charles Wolfram's 1300-page text covers both the standard ground and some unexpected territory. Subchapter headings include for example: "Lawyer Liability to Nonclients for Negligence," "Conflict of Interest in Criminal Cases," and "Group Legal Services."

Legal Malpractice^{[Ftn 3](#)} is a hornbook devoted solely to the subject of lawyer malpractice. *Legal Malpractice* covers such issues as "Liability to Nonclients," "Fiduciary Obligations," and "Recurring Areas of Malpractice Exposure." Also included is a section on "Professional Liability Insurance." *Legal Malpractice* is periodically supplemented with a pocket part.

ABA Annotated Model Rules of Professional Conduct. This volume includes a comparison of each

provision of the Model Rules to the former ABA Model Code of Professional Responsibility. The volume contains a comprehensive discussion of the case law and other authorities pertaining to each of the Rules of Professional Conduct. There are also tables cross-referencing the Model Rules and Model Code and a topical index to legal background.

American Bar Association Formal and Informal Ethics Opinions. Since 1922, the ABA Committee on Professional Ethics has issued formal and informal ethics opinions based upon 1) the Canons of Professional and Judicial Ethics; 2) the Model Code of Professional Responsibility; and 3) the Model Rules of Professional Conduct.

Formal opinions are interpretations of Canons, Disciplinary Rules, and Rules of Professional Conduct that the committee believes to be of broad, general interest. Examples include Attorney/Advocate as a Witness – No. 339; Former Government Lawyers – No. 342; and Lawyer Confidentiality – No. 84-349.

Informal opinions are committee responses to questions that are comparatively narrower in scope and arise less frequently. Informal opinions include Disclosures of Clients' Intent to Commit Suicide – No. 83-1500 Assistance of Lawyer/Witness to Substituted Appellate Counsel – No. 83-1503 and Use of "Of-Counsel" Designation While Sharing Office Overhead on the Basis of Gross Receipts – No. 84-1506.

The Legislative History of the Model Rules of Professional Conduct; Their Development in the ABA House of Delegates, traces the development of the Model Rules from the time the ABA recommended the Restatement format at the 1982 ABA House of Delegates midyear meeting to their adoption at the 1983 annual meeting. *Model Rules Legislative History* has been prepared from the recommendations presented to the ABA House of Delegates and the transcripts of the House debates.

Model Rules Legislative History provides a brief chronology of each rule's development including a report of any debate that took place during consideration of the rule. For example, the section pertaining to Rule 1.6, governing client confidentiality, discusses the significant debate over the exceptions to the duty of confidentiality with respect to lawyers rectifying client fraud.

Shepard's Professional and Judicial Conduct Citations. As in other areas of the law, *Shepard's* has compiled a comprehensive system of citations to the ABA formal and informal ethics opinions, the ABA Model Rules of Professional Conduct, and the Model Code of Professional Responsibility. *Shepard's* provides the user with a shortcut method for locating citations to relevant cases, ethics opinions, law review articles, and ALR annotations by shepardizing a particular rule of professional conduct or disciplinary rule.

Most of these professional responsibility resources are available at the state law library, local law school libraries, and the Hennepin County Law Library. *Model Rules Legislative History* is a 1987 publication and is available from the ABA Center for Professional Responsibility in Chicago.

NOTES

¹ Geoffrey C. Hazard, Jr. and W. William Hodes, *The Law of Lawyering: A Handbook on the Rules of Professional Conduct*. New York: Law & Business, 1985.

² Charles Wolfram, *Modern Legal Ethics*, St. Paul: West Publishing Co., 1986.

³ Ronald E. Mallen and Victor B. Levit, *Legal Malpractice*, 2nd Edition. St. Paul: West Publishing Co, 1981.