

## Researching Legal Ethics

*Teachable Moments ... is a regular feature of Perspectives designed to give teachers an opportunity to describe techniques or strategies for presenting a particular research or writing topic to their students. Readers are invited to submit their own “teachable moments” to the editors of the column: Elizabeth Edinger, The Catholic University of America, e-mail: [edinger@law.edu](mailto:edinger@law.edu), or Craig A. Smith, Vanderbilt University Law School, e-mail: [craig.smith@law.vanderbilt.edu](mailto:craig.smith@law.vanderbilt.edu).*

### By Stephen Young

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*“There is a vague popular belief that lawyers are necessarily dishonest ... Let no young man choosing the law for a calling for a moment yield to the popular belief—resolve to be honest at all events. ...”*

—Abraham Lincoln<sup>1</sup>

There are few areas of the law that have as large an impact on a law student’s future career and yet attract so little attention from a law student as legal ethics. However attracting even less of the law student’s attention is the process of how to research issues in legal ethics. It is certainly true that this is an area that at first glance appears less than dynamic—an area that has been rigidly governed by the Model Rules of Professional Conduct and its various predecessors for the past 100 years, and relies on state bar interpretations and applications of these rules to provide the excitement.

A more detailed examination of this subject shows that it is actually an area of the law that has undergone many changes in recent years, particularly in

the way we conduct legal research. This quiet revolution in legal ethics research, combined with its comfortable linear structure, should be our key to getting law students more interested in the issues and nuances of researching legal ethics today.

### Starting Points

The nice thing about researching legal ethics is that almost all roads lead to the Model Rules of Professional Conduct (MRPC). The overwhelming majority of the literature in this area is structured to some extent on the MRPC. This simple statement, connecting the literature to the rules, can greatly help students understand where and how to begin their research since it implies a ready-made methodology for approaching this subject.

At this point a little history is needed. The American Bar Association adopted the original Canons of Professional Ethics in 1908, which was replaced by the Model Code of Professional Responsibility in 1969. The Code was itself replaced by the MRPC in 1983, at which time it adopted the now familiar structure of eight topical areas subdivided into many individual rules. The MRPC is available in hard copy from the ABA as either an annual unannotated paperback, or in annotated form (currently in the fifth edition). Copies of the rules can also be found in a number of other sources, including the various compendium and compilation deskbooks that are so often a staple of required reading booklists for professional responsibility classes (e.g., John Dzienkowski, *Professional Responsibility Standards, Rules and Statutes*). The ABA’s Center for Professional Responsibility Web site provides online access to the MRPC,<sup>2</sup> as does the Legal Ethics Library on

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<sup>1</sup> Abraham Lincoln, *Notes for a Law Lecture* (July 1, 1850), in *The Complete Works of Abraham Lincoln* 143 (John G. Nicolay & John Hay, eds. 1894).

<sup>2</sup> American Bar Association, Center for Professional Responsibility, Model Rules of Professional Conduct, <[www.abanet.org/cpr/mrpc/mrpc\\_toc.html](http://www.abanet.org/cpr/mrpc/mrpc_toc.html)>.

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Cornell University’s Legal Information Institute Web site.<sup>3</sup> Needless to say, Westlaw® and LexisNexis® also provide the text of the Model Rules, although Westlaw also includes the annotated version in its database. In short, a student should never have lack of access as an excuse for not consulting the MRPC.

A useful recent addition to the various versions of the MRPC is the ABA’s *Legislative History: The Development of the ABA Model Rules of Professional Conduct, 1982–2005*. This one-volume publication provides the researcher with the text of amendments and comments for versions of rules proposed and passed by the ABA House of Delegates. This is an essential resource for determining how the rules have developed over the past quarter century.

### The Essential Tools

In legal research there is rarely such a thing as one-stop shopping; however mention legal ethics to any attorney and usually the *ABA/BNA Lawyers’ Manual on Professional Conduct* is the first, and sometimes only, resource mentioned. For the past 27 years this invaluable resource has served as the most essential weapon in the legal researcher’s arsenal of legal ethics resources. The traditional looseleaf arrangement divided the set into the manual (comprised of practice guides structured around the MRPC), the *Current Reports* binder (i.e., recent developments in a newsletter format), and binders for the full text of ABA formal and informal opinions and synopsis of state bar ethics opinions.

In recent years the *Lawyers’ Manual* has gone online. BNA offers the *Lawyers’ Manual* to law schools as either part of a package or as an à la carte offering in its online law school program. The online product does provide an attractive and useful search interface; however the actual content does not differ from the print product, and a potential opportunity to more frequently integrate

the material in the *Current Reports* section with the material in the *Practice Guides* section was wasted.

Perhaps one of the most misunderstood and neglected resources by law students across the country are the restatements. To the student they appear to fall in that gray area, somewhere between the mandatory authority of primary materials and the persuasive authority of secondary sources. The publication of the *Restatement of the Law Third—The Law Governing Lawyers* in 2000 was the American Law Institute’s first attempt to clarify and synthesize the current state of the law in this area, and is now considered an essential resource in legal ethics. The restatements are available on Westlaw and LexisNexis in addition to the traditional hard-copy versions.

### ABA Ethics Opinions

Although not considered mandatory authority, the formal and informal opinions released by the ABA Committee on Ethics and Professional Responsibility have served as a persuasive interpretation of the Model Rules for many years. Formal opinions address issues that may apply to practicing attorneys throughout the profession, while informal opinions were issued in response to a specific situation. It is worth noting that the ABA ceased issuing informal opinions at the end of the 1980s. The opinions are available in a number of resources, including the *ABA/BNA Lawyers’ Manual on Professional Conduct* (1980–present), *Opinions of the Committee on Professional Ethics* (1924–1965), and *Formal and Informal Ethics Opinions* (various compilations covering the period 1967–1998).

Online availability of ABA ethics opinions is provided by LexisNexis and Westlaw. Both services provide access to formal opinions dating back to the first formal opinion issued in 1924, and to informal opinions dating back to 1960. The ABA Web site offers summaries of formal opinions dating back to 1984, but only provides the full text of opinions for a fee.<sup>4</sup> The *Lawyers’ Manual* online provides the full

<sup>3</sup> Legal Information Institute, American Legal Ethics Library, Model Rules of Professional Conduct, <[www.law.cornell.edu/ethics/aba/index.htm](http://www.law.cornell.edu/ethics/aba/index.htm)>.

<sup>4</sup> American Bar Association, Formal Ethics Opinions, <[www.abanet.org/cpr/pubs/subject\\_index.html](http://www.abanet.org/cpr/pubs/subject_index.html)>.

text of formal opinions for the period 1987–present, and the full text of informal opinions for the period 1988–1989.

### Locating State Resources

The MRPC serve as the basis for most, but not all of the ethical codes for the 50 states and the District of Columbia. These state codes are traditionally enacted as part of the state statutes or the state court rules, and can be located in the standard resources used for locating state statutes and court rules. It should be noted that 47 states and the District of Columbia have adopted the MRPC, often with significant modifications. New York, California, and Maine are the holdouts, relying on the Model Code or developing their own set of ethical codes.

State ethics opinions have always been an important source for researching how the rules have been applied in specific instances in their respective jurisdictions. Attempting to locate the full text of state ethics opinions has always been a little troublesome. Traditionally, the best source was the *National Reporter on Legal Ethics and Professional Responsibility* by Jacobstein, Mersky, and Quist. Although selective, it is a useful compilation of ethics opinions from around the states. Westlaw and LexisNexis now provide access to various state ethics opinions, although neither database provides coverage for more than a select number of jurisdictions. More recently, a number of state bar associations have released the full text of their ethics opinions on their Web sites.<sup>5</sup> The Legal Ethics Library hosted by the Legal Information Institute at Cornell University provides detailed information for each jurisdiction regarding availability of ethics opinions through the state bar Web sites.<sup>6</sup> It should be noted that a number of state bars only provide access to this material to bar members, or, if access is provided to nonmembers, charge a fee for this service.

<sup>5</sup> A listing of state and local bars is provided by the ABA at <[www.abanet.org/barserv/stlobar.html](http://www.abanet.org/barserv/stlobar.html)>.

<sup>6</sup> Legal Information Institute, American Legal Ethics Library, Listing by Jurisdiction, <[www.law.cornell.edu/ethics/listing.html](http://www.law.cornell.edu/ethics/listing.html)>.

### Disciplinary Proceedings

Locating lawyer disciplinary proceedings constitutes a real challenge to the legal researcher. The challenge is largely a by-product of the huge variation between jurisdictions in the publication of the results of the proceedings. In some states the results are digested in the state bar journal, while other states have no formal publication method for these decisions. The results of the proceedings are, however, often reflected in the information contained in the individual state's lawyer disciplinary database. More and more states are making this information available to the public on the disciplinary board's Web site (usually this is under the authority of the state bar or the state supreme court). The ABA Center for Professional Responsibility provides a useful list of contact information for the various state disciplinary agencies on its Web site.<sup>7</sup> A similar list is also available on the National Organization of Bar Counsel Web site.<sup>8</sup> The ABA has compiled disciplinary information from the various states into one national database, the National Lawyer Regulatory Data Bank, which is available for a fee on the ABA Center for Professional Responsibility Web site.<sup>9</sup>

### Staying Current

As I mentioned at the outset, in recent years we have witnessed a quiet revolution in the way we conduct research in legal ethics. Today staying current means more than just checking the *Current Reports* section of the *Lawyers' Manual*; it might require setting up an RSS feed for blogs devoted to legal ethics, monitoring the law review literature even before articles have been published, and reviewing proposed rule changes on a state bar Web site. There is not enough space in this short article

<sup>7</sup> American Bar Association, Center for Professional Responsibility, Directory of Lawyer Disciplinary Agencies, <[www.abanet.org/cpr/regulation/scpd/disciplinary.html](http://www.abanet.org/cpr/regulation/scpd/disciplinary.html)>.

<sup>8</sup> National Organization of Bar Counsel, Bar Associations and Disciplinary Authorities, <[www.nobc.org/links/bar.asp](http://www.nobc.org/links/bar.asp)>.

<sup>9</sup> American Bar Association, Center for Professional Responsibility, National Lawyer Regulatory Data Bank, <[www.abanet.org/cpr/regulation/databank.html](http://www.abanet.org/cpr/regulation/databank.html)>.

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to cover many of the current awareness tools out there; however, the following constitute some of the more useful resources in this area.

Over the past few years, a number of blogs have sprung up devoted to the topic of legal ethics. Among the best is the Legal Ethics Forum,<sup>10</sup> founded by a group of prominent law school professors. This site is topical, fresh, and a great jumping-off point to other legal ethics resources on the Internet. Many blogs provide the option of an RSS feed that delivers new content directly to subscribers.

The area of legal ethics is populated by a number of law reviews and journals. Among the more well-respected journals are the *Georgetown Journal of Legal Ethics*, the *Journal of the Legal Profession*, and the *Notre Dame Journal of Law, Ethics and Public Policy*. Keeping current with the journal literature in today's research environment requires taking advantage of the alert services on Westlaw and LexisNexis, seeing if your law library subscribes to the SmartCILP current awareness service offered by the University of Washington Law Library,<sup>11</sup> and monitoring sites such as the Legal Scholarship Network<sup>12</sup> and BePress<sup>13</sup> (Berkeley Electronic Press) for working papers and accepted papers posted by law faculty from around the country long before they are published. The resources for helping the legal researcher stay current have never been better; the trick is to know which ones to use and how to use them effectively.

### Some Final Thoughts

Even a casual reader of this short piece would notice that I did not address a number of issues pertinent to researching legal ethics. Sometimes this was simply due to lack of space, such as the issue of

multijurisdictional practice (MJP), an issue worthy of its own article, and sometimes the omission was more intentional. For instance, most law students feel relatively comfortable with researching case law, and therefore I did not address the methods and resources for locating cases that discuss or interpret ethical rules. In those instances where there are omissions or I have provided incomplete information, I strongly recommend students consult Lee Peoples, *Legal Ethics: A Legal Research Guide* (2006). This concise yet highly informative guide provides a very accessible overview of the world of researching legal ethics.

The purpose of this piece has been to sensitize students to the various resources that might assist them in this area of research. The topic of legal ethics will inevitably follow students during their time in law school, the taking of the bar exam, and throughout their legal career. Given this inevitability, it is essential that students learn early on how to effectively and efficiently use the literature and resources that accompany legal ethics.

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<sup>10</sup> Legal Ethics Forum, <[www.legalethicsforum.com/](http://www.legalethicsforum.com/)>.

<sup>11</sup> Marian Gould Gallagher Law Library, University of Washington School of Law, SmartCILP, <[lib.law.washington.edu/cilp/scilp.html](http://lib.law.washington.edu/cilp/scilp.html)>.

<sup>12</sup> Social Science Research Network, Legal Scholarship Network, <[www.ssrn.com/lsn/](http://www.ssrn.com/lsn/)>.

<sup>13</sup> Berkeley Electronic Press, <[www.bepress.com/](http://www.bepress.com/)>.