

GUIDE TO LOCATING MODEL CODE OR RULES OF PROFESSIONAL CONDUCT and ETHICS OPINIONS

Ethical Canons, Code of Professional Conduct, Rules of Professional Responsibility

Three sets of ethical standards have been in place over the last 80 years. The Canons of 1908 were adopted by the ABA and remained in effect until 1969. They were short and mostly hortatory. They are important mainly for being the forerunner to the 1969 Code.

The Code of Professional Conduct was adopted by the ABA in 1969/70. It was an attempt to create mandatory standards. It is divided into 3 parts: 1) Canons (9 general norms); each canon is accompanied by 2) ethical considerations (ECs) and 3) disciplinary rules (DRs). ECs were aspirational, but DRs were not to be violated. DRs were considered law when adopted by a state.

The Model Rules of Professional Responsibility, adopted by the ABA in 1983, dropped the distinction between ECs and DRs. The Model Rules are 52 numbered, black letter rules, each followed by comments explaining their applications.

Because the ABA is a voluntary organization (not every lawyer belongs), in order for ethical standards to have any weight, they must be adopted and enforced by each state. Even then the extent of enforcement is discretionary and problematical. When the Code of Professional Conduct first appeared it was adopted quickly by most states. When the Rules were adopted by the ABA, many states didn't change from the Code to the Rules. As of 1988, 28 states had adopted the Rules (see *ABA/BNA Manual* for further updating of the number). Many have adopted a little of both with variations and amendments. Proposed advisory opinions may be found in *The Florida Bar News*.

Because both the Code or Rules may be in effect depending on the State, both are still published and referenced. Several publications may be consulted: *Selected Standards of Professional Responsibility*, *Law of Lawyering* (2 volumes), *Martindale Hubbel*, *ABA/BNA Manual of Professional Conduct*.

Ethics Opinions

Ethics Opinions have been issued by ABA's Standing Committee on Ethics and Professional Responsibility since 1924. They are published in a variety of sources, and are issued on proper professional or judicial conduct in relation to the ethical standards in place. While at one time significant in professional discipline of attorneys, ethics opinions' influence has declined over the years. They're rarely cited to or relied upon by the courts. Opinions cannot be issued on questions pending before the court or about issues of law

Two types of ethics opinions are issued: formal and informal. Formal opinions concern subjects of general interest to the Bar; informal opinions, which are more numerous, are responses to specific inquiries usually made by lawyers.

Texts of almost all ABA opinions can be located and accessed by either opinion number or topic. Current opinions may be found on both Lexis and Westlaw.

The first set of formal opinions (#1-315, 1924-1965) was published in *Opinions of the Committee on Professional Ethics* (KF/305/A2/1967). This volume contains a citator for early opinions indicating if a formal opinion was followed, mentioned, etc. An index by topic is provided. Summaries of some early informal opinions are located in this volume as well.

Formal opinions #316-348 (1967-1982) are printed in *Formal and Informal Ethics Opinions* (KF/305/A2/1985a) (missing from shelf). More recent formal opinions, #349-current (1984-2000) are found in the binder of *Recent Ethics Opinions* (KF/305/A2). The *ABA Journal* (A 517) publishes new formal ethics opinions and provides commentary.

Texts of informal opinions #1-230 (pre 1961) are found in summary format only (*Opinions on Professional Ethics*). Even then, some summaries are not available of those opinions. They are designated as unpublished. The history of early informal opinions is obscure. Until 1968, some were entitled "informal decisions." Some pre-1965 informal opinions contained the prefix "c" before the number. Only one series of informal opinions exists though despite these inconsistencies.

Informal opinions #230a-866 (1961-1966) are published in *Informal Ethics Opinions* (KF/305/A2/1975). The next volume of informal opinions is also entitled *Informal Ethics Opinions* and includes #867-1284 (1965-1973). The last bound volume of the series, *Formal and Informal Ethics Opinions* (1974-1982) (KF/305/A2/1985a) includes #1285-1495 (1974-1982). Like the current formal opinions, more current informal opinions are collected in the binder of *Recent Ethics Opinions beginning with #1496*. Selected informal opinions and discussions of them are printed in the *ABA Journal*.

ABA Formal and Informal Opinions from 1980-current are also printed in the *ABA/BNA Lawyers Manual on Professional Conduct* (KF/305/A23/1984). Full texts are provided.

Individual state bars or county bars also publish opinions. Forty-five states are included in the *ABA/BNA Manual* at this time. These opinions are printed in digest form only and are found in the *ABA/BNA*. Full texts can be obtained by contacting the issuing body (this information is provided in the *ABA/BNA* for each state). In addition, frequently State Bar Journals will contain the full text of state ethics opinions.

The annual September issue of The Florida Bar Journal publishes the Rules Regulating The Florida Bar; The Florida Bar Foundation Charter and Bylaws; the oath of Admission; the Code of Judicial Conduct; Legislative Policy and Procedure of The Florida Bar; and The Florida Bar Procedures for Ruling on Questions of Ethics. Also in the *Florida Statutes Annotated*.

The Committee on Professional Ethics of The Florida Bar renders opinions to individual members of The Florida Bar relating to their proposed conduct. The Bar has published selected opinions at irregular intervals since 1959 in a series of paperback manuals entitled Professional Ethics: Selected Opinions of the Professional Ethics Committee of The Florida Bar. Each volume includes a topical index and citation tables. In 1980 the Bar began publishing all the opinions back to 1959 in looseleaf form under the title Professional Ethics Of The Florida Bar.

For topical access to older ABA and state and county bar ethics opinions, use the four volume set (latest supp, v.5 is on order 12/89) of the *Digest of Bar Association Ethics Opinions* (KF/305/A2/1970). Summaries of opinions are arranged numerically. and topical indexes are included.

Treatises

Several treatises are useful in researching the area of ethics as well as in providing cites to relevant cases and journal articles.

<i>Modern Legal Ethics.</i> Wolfram	KF/306/W59/1986
<i>The Law of Lawyering.</i> Hazard and Hodes	(Res.) KF306 .H33 2001
<i>Legal Ethics: the Lawyer's Deskbook on Professional Responsibility.</i> Rotunda	KF/306/R67
<i>Problems in Professional Responsibility</i> , 4th ed. Kaufman	KF/306/A4/K3/2002
<i>Legal Ethics.</i> Kaufman	KF306 .Z9 K38 2004

ETHICS--FLORIDA

Advisory Opinions Of The Commission On Ethics	1974-1979	KFF406 A4
Code Of Professional Responsibility By State		KF306 .Z95 C6
Florida Bar Ethics - Opinions 1959-1983		KFF76.5 .A2 A5
Florida Legal Ethics	(Res)	KFF76.5 .A2 F56
Florida Rules of Professional Conduct		KFF76.5 .A2 F5
Opinions of the Supreme Court's Cttee on Standards of Conduct Governing Judges		KFF525.5 .D5 F56
Professional Ethics Of The Florida Bar 1959-1983	V. 1-2	KFF76.5 .A2 A5
Professional Ethics Of The Florida Bar 1987-		KFF76.5 .A2 A5 1987
Professional Ethics Of The Florida Bar 1998-		KFF76.5 .A2 A5 1998
Digest Of Advisory Opinions Florida Commission On Ethics		KFF406 .A4

Online Resources

As mentioned above, both Lexis and Westlaw have the Codes of Professional Responsibility and ethical opinions. A comprehensive tool on Lexis is the National Reporter on Legal Ethics and Professional Responsibility.

Other internet options include excellent study guides at both Duke Law Library and Georgetown Law Library.

The Legal Information Institute at Cornell has easy access to most states' ethical resources. <http://www.law.cornell.edu/ethics/florida.html> is one of the easier ways to get the Florida Bar materials.

The Virtual Chase also has an easily navigable site with links to the states and additional online materials. <http://www.virtualchase.com/resources/ethics.shtml>