

MRPC INTRODUCTION 2

American Bar Association
Model Rules of Professional Conduct

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COMMISSION ON EVALUATION OF THE RULES OF PROFESSIONAL CONDUCT (“ETHICS 2000”) CHAIR'S INTRODUCTION

In mid-1997, ABA President Jerome J. Shestack, his immediate predecessor, N. Lee Cooper, and his successor, Philip S. Anderson had the vision to establish the “Ethics 2000” Commission. These three leaders persuaded the ABA Board of Governors that the Model Rules adopted by the ABA House of Delegates in 1983 needed comprehensive review and some revision, and this project was launched. Though some might have thought it premature to reopen the Model Rules to such a rigorous general reassessment after only fourteen years, the evaluation process has proven that the ABA leadership was correct.

One of the primary reasons behind the decision to revisit the Model Rules was the growing disparity in state ethics codes. While a large majority of states and the District of Columbia had adopted some version of the Model Rules (then thirty-nine, now forty-two), there were many significant differences among the state versions that resulted in an undesirable lack of uniformity--a problem that had been exacerbated by the approximately thirty amendments to the Model Rules between 1983 and 1997. A few states had elected to retain some version of the 1969 Model Code of Professional Responsibility, and California remained committed to an entirely separate system of lawyer regulation.

But it was not only the patchwork pattern of state regulation that motivated the ABA leaders of 1997 to take this action. There were also new issues and questions raised by the influence that technological developments were having on the delivery of legal services. The explosive dynamics of modern law practice and the anticipated developments in the future of the legal profession lent a sense of urgency as well as a substantive dimension to the project. These developments were underscored by the work then underway on the American Law Institute's *Restatement of the Law Governing Lawyers*.

There was also a strong countervailing sense that there was much to be valued in the existing concepts and articulation of the Model Rules. The Commission concluded early on that these valuable aspects of the Rules should not be lost or put at risk in our revision effort. As a result, the Commission set about to be comprehensive, but at the same time conservative, and to recommend change only where necessary. In balancing the need to preserve the good with the need for improvement, we were mindful of Thomas Jefferson's words of nearly 185 years ago, in a letter concerning the Virginia Constitution, that “moderate imperfections had better be borne with; because, when once known, we accommodate ourselves to them, and find practical means of correcting their ill effects.”

Thus, we retained the basic architecture of the Model Rules. We also retained the primary disciplinary function of the Rules, resisting the temptation to preach aspirationally about “best practices” or professionalism concepts. Valuable as the profession might find such guidance, it would not have--and should not be misperceived as having--a regulatory dimension. We were, however, always conscious of the educational role of the Model Rules. Finally, we tried to keep our changes to a minimum: when a particular provision was found not to be “broken” we did not try to “fix” it. Even so, as the reader will note, the Commission ended up making a large number of changes: some are relatively innocuous and nonsubstantive, in the nature of editorial or stylistic changes; others are substantive but not particularly controversial; and a few are both substantive and controversial.

The deliberations of the Commission did not take place in a vacuum and our determinations are not being pronounced *ex cathedra*. Rather, they are products of thorough research, scholarly analysis, and thoughtful consideration. Of equal importance, they have been influenced by the views of practitioners, scholars, other members of the legal profession, and the public. All these constituencies have had continual access to and considerable--and proper--influence upon the deliberations of the Commission throughout this process.

I must pause to underscore the openness of our process. We held over fifty days of meetings, all of which were open, and ten public hearings at regular intervals over a four-and-a-half-year period. There were a large number of interested observers at our meetings, many of whom were members of our Advisory Council of 250-plus persons, to offer comments and suggestions. Those observations were very helpful and influential in shaping the Report. Our public discussion drafts, minutes, and Report were available on our website for the world to see and comment upon. As a consequence, we received an enormous number of excellent comments and suggestions, many of which were adopted in the formulation of our Report.

Moreover, we encouraged state and local bar associations, ABA sections and divisions, other professional organizations, and the judiciary to appoint specially designated committees to work with and counsel the Commission. This effort was successful, and the Commission benefitted significantly from the considered views of these groups.

In heeding the counsel of these advisors, we were constantly mindful of substantial and high-velocity changes in the legal profession, particularly over the past decade. These changes have been highlighted by increased public scrutiny of lawyers and an awareness of their influential role in the formation and implementation of public policy; persistent concerns about lawyer honesty, candor, and civility; external competitive and technological pressures on the legal profession; internal pressures on law firm organization and management raised by sheer size, as well as specialization and lawyer mobility; jurisdictional and governance issues, such as multidisciplinary and multijurisdictional practice; special concerns of lawyers in nontraditional practice settings, such as government lawyers and in-house counsel; and the need to enhance public trust and confidence in the legal profession.

At the end of the day, our goal was to develop Rules that are comprehensible to the public and provide clear guidance to the practitioner. Our desire was to preserve all that is valuable and enduring about the existing Model Rules, while at the same time adapting them to the realities of modern law practice and the limits of professional discipline. We believe our product is a balanced blend of traditional precepts and forward-looking provisions that are responsive to modern developments. Our process has been thorough, painstaking, open, scholarly, objective, and collegial.

It is impossible here to go into detail about the changes proposed by the Commission. The changes recommended by the Commission clarified and strengthened a lawyer's duty to communicate with the client; clarified and strengthened a lawyer's duty to clients in certain specific problem areas; responded to the changing organization and structure of modern law practice; responded to new issues and questions raised by the influence that technological developments are having on the delivery of legal services; clarified existing Rules to provide better guidance and explanation to lawyers; clarified and strengthened a lawyer's obligations to the tribunal and to the justice system; responded to the need for changes in the delivery of legal services to low- and middle-income persons; and increased protection of third parties.

The ABA House of Delegates began consideration of the Commission's Report at the August 2001 Annual Meeting in Chicago and completed its review at the February 2002 Midyear Meeting in Philadelphia. At the August 2002 Annual Meeting in Washington, D.C., the ABA House of Delegates considered and adopted additional amendments to the Model Rules sponsored by the ABA Commission on Multijurisdictional Practice and the ABA Standing Committee on Ethics and Professional Responsibility. As state supreme courts consider implementation of these newly revised Rules, it is our fervent hope that the goal of uniformity will be the guiding beacon.

In closing, the Commission expresses its gratitude to the law firm of Drinker Biddle & Reath, whose generous contribution helped make possible the continued, invaluable support of the Commission's Chief Reporter. I also want to express personally my gratitude to and admiration for my colleagues. The chemistry, goodwill, good humor, serious purpose, collegiality, and hard work of the Commission members, Reporters, and ABA staff have been extraordinary. The profession and the public have been enriched beyond measure by their efforts. It has been a pleasure and a privilege for me to work with all of them.

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