


1995

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### Recommended Citation

4 Perspectives: Teaching Legal Research And Writing 5 (1995)

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## INSTILLING AN APPRECIATION OF LEGAL ETHICS AND PROFESSIONAL RESPONSIBILITY IN FIRST-YEAR LEGAL RESEARCH AND WRITING COURSES

BY BETH D. COHEN

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In the introduction to section 10 ("Recognizing and Resolving Ethical Dilemmas") of its *Statement of Fundamental Lawyering Skills and Professional Values*, the MacCrate Commission recognizes that "[i]n order to represent a client consistently with applicable ethical standards, a lawyer should be familiar with the skills, concepts, and processes necessary to recognize and resolve ethical dilemmas."<sup>1</sup> In her review for *Perspectives* of a 1993 Conference on the MacCrate Report, Professor Helene Shapo of Northwestern acknowledges an American Bar Foundation study of Chicago lawyers that identified fundamental lawyering skills, and notes that "[t]he ABF study identified oral and written communication as the lawyer's two most important skills, which along with reasoning and sensitivity to ethical concerns, were identified by the hiring partners [of major Chicago law firms] as those that new lawyers should bring with them, as opposed to developing primarily on the job."<sup>2</sup> First-year law students begin to develop legal research and writing habits on the very first day of classes, even during orientation sessions. These practices may last their professional lifetimes and set the tone for much of their professional development. It is best to have students learn and recognize good, careful, thorough habits and skills from the beginning of their legal education. The ABA Model Rules of Professional Conduct provide that "[a] lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation."<sup>3</sup> Consequently, an appreciation of sound ethical standards and good habits should be incorporated into the legal research and writing curriculum right from the start.

All teachers have the opportunity to touch and influence the lives of their students. Given the nature of many first-year research and writing programs—smaller class sizes, ongoing projects and constant critiquing of students' work-product—those who teach legal research and writing courses are often in a unique position to influence the students' perspective of the law and legal education in both subtle and obvious ways. Teachers of legal research and writing can and should instill in students an ethical obligation and sense of responsibility consistent with the mandates of the American Bar Association Model Rules of Professional Conduct. There are many ways in which ethical concerns and considerations can be integrated into discussions of legal research and writing. Students particularly appreciate when their academic assignments are put into context and made relevant to future practical endeavors. Therefore, it is appropriate to inform students in legal research and writing classes of the impact that ethical considerations have on the completion of all of their work.

One vehicle to accomplish the integration of ethical concerns into legal research and writing courses is to remind students that the cases they are reading involve real people and that the decisions actually impact people's lives. Additionally, the hypothetical problems used in the first-year research and writing programs are often based loosely on actual cases. Students are more likely to consider the ethical aspects of their work when they sense a relation between their work and the outcome.

It is also possible to provide students with problems that include analysis of ethical issues. For example, at Western New England College School of Law, the Lawyering Process Department has incorporated an editorial about legal ethics into one of the first writing assignments. This exercise provided a good forum to introduce students to ethical considerations as they affect the legal profession. Students were able to express awareness and concern about potential legal malpractice and other sanctions that may be imposed on an attorney for illegal or unethical conduct. Although it is not necessary to instill fear or paranoia, it is important to highlight the connection between careful, accurate writing and drafting and ethics and professionalism.

<sup>1</sup> Task Force on Law Schools and the Profession: Narrowing the Gap, American Bar Association, *Statement of Fundamental Lawyering Skills and Professional Values* 80 (1992).

<sup>2</sup> Helene S. Shapo, *The MacCrate Report Conference: A Review*, 2 *Perspectives* 54 (1994).

<sup>3</sup> Model Rules of Professional Conduct Rule 1.1 (1983).



Students should also be reminded that the work they are doing in the academic setting is practice toward the work they will soon be completing for clients. Students should be encouraged to consider the ramifications of their work-product to their own professional reputation and their client's case. Submitting a work that lacks professional quality, whether student or attorney, may affect the ultimate result as well as the credibility and reputation of the individual whose signature is attached.<sup>4</sup> The Federal Rules of Civil Procedure require attorneys to certify, by their signature, that their written work is reasonably supported by law and fact and is not advanced for an improper purpose.<sup>5</sup> The 1993 amendments to the Federal Rules of Civil Procedure enable judges to impose "an appropriate sanction upon the attorney, law firms or parties that have violated [Rule 11] or are responsible for the violation."<sup>6</sup> Students should also be informed that pursuant to Federal Rule of Civil Procedure 11(c)(2) the court may impose a broad range of sanctions including the following:

directives of a nonmonetary nature, an order to pay a penalty into court, or, if imposed on motion and warranted for effective deterrence, an order directing payment to the movant of some or all of the reasonable attorneys' fees and other expenses incurred as a direct result of the violation.<sup>7</sup>

It is also possible to integrate ethical concerns into a discussion of legal writing by informing students that they are always considered officers of the court.<sup>8</sup> The Model Rule of Professional Conduct entitled "Candor Toward the Tribunal" provides that

- [a] lawyer shall not knowingly:
- (1) make a false statement of material fact or law to a tribunal;
  - (2) fail to disclose a material fact to a tribunal when disclosure is necessary to avoid assisting a criminal or fraudulent act by the client;
  - (3) fail to disclose to the tribunal legal authority in the controlling jurisdiction known to the lawyer to be directly adverse to the position of the client and not disclosed by opposing counsel; or
  - (4) offer evidence that the lawyer knows to be false. ...<sup>9</sup>

Additionally,

[a] lawyer shall not: ... in trial, allude to any matter that the lawyer does not reasonably believe is relevant or that will not be supported

by admissible evidence, assert personal knowledge of facts in issue except when testifying as a witness, or state a personal opinion as to the justness of a cause, the credibility of a witness, the culpability of a civil litigant or the guilt or innocence of an accused.<sup>10</sup>

The Model Rules of Professional Conduct also provide guidelines for representing clients that are relevant for a student's consideration when framing their legal arguments and analysis.<sup>11</sup> According to these ethical guidelines "[a] lawyer shall not bring or defend a proceeding, or assert or controvert an issue therein, unless there is a basis for doing so that is not frivolous, which includes a good faith argument for an extension, modification or reversal of existing law."<sup>12</sup> Therefore, when teaching legal writing and

<sup>4</sup> Rule 11 of the Federal Rules of Civil Procedure requires an attorney's signature on

[e]very pleading, written motion, and other paper ... [which] is certifying that to the best of the person's knowledge, information and belief, formed after an inquiry reasonable under the circumstances,—

- (1) it is not being presented for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation;
- (2) the claims, defenses, and other legal contentions therein are warranted by existing law or by a nonfrivolous argument for the extension, modification, or reversal of existing law or the establishment of new law;
- (3) the allegations and other factual contentions have evidentiary support or, if specifically so identified, are likely to have evidentiary support after a reasonable opportunity for further investigation or discovery; and
- (4) the denials of factual contentions are warranted on the evidence or, if specifically so identified, are reasonably based on a lack of information or belief.

Fed. R. Civ. P. 11.

<sup>5</sup> *Id.*

<sup>6</sup> Fed. R. Civ. P. 11(c).

<sup>7</sup> Fed. R. Civ. P. 11(c)(2).

<sup>8</sup> "A lawyer is a representative of clients, an officer of the legal system and a public citizen having a special responsibility for the quality of justice," Model Rules of Professional Conduct pmb. (1983).

<sup>9</sup> Model Rules of Professional Conduct Rule 3.3(a) (1983); see also Model Code of Professional Responsibility DR 7-102, DR 7-106 (B) (1981) (similar provisions).

<sup>10</sup> Model Rules of Professional Conduct Rule 3.4(e) (1983); see also Model Code of Professional Responsibility DR 7-106 (C) (1981) (similar provision).

<sup>11</sup> See, e.g., Model Rules of Professional Conduct Rule 1.2 (Scope of Representation), Rule 3.1 (Meritorious Claims and Contentions), Rule 3.2 (Expediting Litigation), Rule 3.3 (Candor Toward the Tribunal), Rule 3.4 (Fairness to Opposing Party and Counsel), Rule 4.1 (Truthfulness in Statements to Others), Rule 4.4 (Respect for Rights of Third Persons), Rule 8.4 (Misconduct).

<sup>12</sup> Model Rules of Professional Conduct Rule 3.1 (1983).

analysis, particularly in framing and organizing issues and arguments, it is helpful to provide students with some background information regarding the professional and ethical standards and remind students that “a lawyer should seek improvement of the law, the administration of justice, and the quality of service rendered by the legal profession.”<sup>13</sup>

The academic corollary to professional standards and the Federal Rules of Civil Procedure is that many law schools now have honor codes that dictate acceptable and ethical behavior of students.<sup>14</sup> Ethical or honor code issues regarding appropriate collaboration, avoiding plagiarism and providing proper attribution are topics that should be integrated into legal research and writing classes. For example, students may be required to sign either their written work or a copy of the honor code to highlight the seriousness of the standards and to affirm the students’ compliance with work-product requirements.

Although students are required to take a course in professional responsibility, ethical considerations and conflicts for lawyers and law students are not discrete. Reference to ethical considerations within legal research and writing courses should not be viewed as replacing any aspect of a professional responsibility course but rather as supplementing such a course. Typically, law students do not take the professional responsibility course until after completing their first year. It is, therefore, even more imperative for students to be introduced to some of the ethical obligations that they face both in an academic environment and in practice. Since law school honor codes are generally made available to students, there should be an effort to connect law students’ ethical obligations to the beginning of their ethical obligations as a lawyer.<sup>15</sup> First-year legal research and writing classes provide the logical forum to remind students of the importance of honesty and integrity both to their work and to the profession and to society as a whole. Teachers would do well to take advantage of this unique opportunity to provide such lessons early and often and more importantly, as part of the regular legal research and writing curriculum.<sup>16</sup> ♦

<sup>13</sup> Model Rules of Professional Conduct pmb. (1983); *see also* Model Code of Professional Responsibility Canon 1 (1981) (“A lawyer should assist in maintaining the integrity and competence of the legal profession”).

<sup>14</sup> For example, at Western New England College School of Law, students receive a copy of the honor code in the orientation materials and in the registration materials.

<sup>15</sup> Model Rules of Professional Conduct (Preamble: A Lawyer’s Responsibilities). *See also* Model Code of Professional Responsibility (1981) (Preamble and Preliminary Statement).

<sup>16</sup> As evidence of the growing recognition of the importance of these issues, the 1994 Summer Conference of the Legal Writing Institute at Chicago Kent College of Law included a session entitled “Teaching Ethics and Professionalism in Legal Writing.”

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