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Solving Your Ethical Conundrums: Researching the Rules of Professional Conduct

by Joyce Manna Janto



Joyce Manna Janto was appointed deputy director of the University of Richmond William Taylor Muse Law Library in July 1991. She previously served as the acquisitions librarian and associate director for collection development at Richmond from 1982 to 1991. She served as president of the Virginia Association of Law Libraries, the Southeastern Chapter of the American Association of Law Libraries, and the American Association of Law Libraries.

When I introduce the topic of ethical rules to my first-year legal research students, someone will always question the need to research them. My students think the rules are a self-explanatory set of guidelines for their behavior, much like the Ten Commandments. They are surprised when I point out the need to research the rules to clarify what is meant by a specific rule, to deepen their understanding of the issues involved, and to gain insight into trends in this area of law. In short, you research ethical rules and issues for the same reasons you undertake any statutory research: in order to ensure that your (or your client's) behavior complies with the law.

The current Model Rules of Professional Conduct (Model Rules), as promulgated by the American Bar Association (ABA), were adopted on August 2, 1983. On January 25, 1999, the Supreme Court of Virginia revised the Virginia Code of Professional Responsibility, replacing it with the Virginia Rules of Professional Conduct (Rules), adapting the Model Rules issued by the ABA. They became effective on January 1, 2000. Since that time, forty-nine states have adopted the Model Rules either in whole or with revisions.¹ Thus, an attorney in Virginia who wishes to research a particular rule or an ethical issue has a wide array of sources available.

Old School Research: Finding Resources in Print

In researching the rules or ethical issues in general, the first question is: print or online? If print is your preference and you merely need the rules, the obvious starting place is the Code of Virginia. The Virginia bar is under the jurisdiction of the Supreme Court of Virginia, so the rules are found in the Court Rules volume.² This volume also

includes the rules dealing with the unauthorized practice of law.³

There are three ways to access the rules in this volume. The first is to use the title index to Part Six. This index lays out the contents of the part in detail. The heading of each rule is listed allowing the user to quickly scan and identify the needed provision. The second way is to use the volume's index. This index provides a more controlled, subject oriented access to the rules. Finally, the general index of the code contains entries to the material found in the rules volume.

The rules in the code are published in the Code of Virginia, and there is some advisory material available to the researcher within the code volumes. While not actually part of the code, the Legal Ethical Opinions (LEOs) and the Unauthorized Practice of Law Opinions (UPLs) issued by the Virginia State Bar (VSB) are provided as unnumbered volumes of the code. These opinions, while they have no precedential value, do give guidance as to how a disciplinary committee might interpret a rule. Access to these opinions is through the subject index which is located at the end of each section.

Since the Virginia Rules are based on the ABA Model Rules, the *ABA/BNA Lawyer's Manual of Professional Conduct* can be a rich source of information if you are seeking a broader interpretation of a particular rule. This loose-leaf service is easy to use as it is arranged in rule number order. Under each rule you will find ethics opinions from the ABA and a variety of bar associations, both state and local. In addition to the ethics opinions, the set contains a current awareness newsletter which summarizes recent opinions issued by courts or bar associations, and articles on ethical issues facing attorneys written by members of the practicing bar. An index provides subject access to the material, both the opinions and the newsletters.

Lawyers in Virginia have the right to appeal the decision of the disciplinary board to the Supreme Court of Virginia, so a print search for case law takes you to the *Virginia/West Virginia*

Digest. A quick perusal of the title index for the topic “Attorney and Client” identifies key numbers for a variety of ethical issues such as the unauthorized practice of law (12), advertising and solicitation (32(9)), malpractice (105.5), and even disbarment (59.14). The digest provides information about decisions issued by any court (federal or state) sitting within the geographic confines of Virginia and West Virginia.

If you are interested in broader trends in legal ethics, you would do well to consult the *Restatement of the Law Third, The Law Governing Lawyers*. This publication of the American Law Institute was issued in 2000. According to the introduction, it covers much of the law governing lawyers but not all of it. At present, the restatement addresses primarily the lawyer-client relationship, confidentiality, and conflicts of interest. Like all restatements, it includes comments on the principles stated, illustrations of the principles in action, and a table of cases which construe the principles addressed.

Along with the restatement, many books have been published in this area in recent years. A search in your library’s catalog using the subject heading “legal ethics - United States” should produce many relevant entries. Books under this subject heading will deal not only with ethics in the abstract, but also with the ethical concerns of specific practice areas. One of my favorite recent titles is *Ethics and Integrity in Law and Business: Avoiding “Club Fed.”*

Web-Based Resources: Free and Subscription

Even though the print resources are easy to use, these days most lawyers prefer to do their research online. The good news is that many of the online sources are free. The most obvious free resource is the website of the VSB.⁴ Clicking on the link for “Professional Regulation” brings up a wealth of resources. As you would expect, the rules are presented here since the VSB no longer provides printed copies. Amendments to the rules, proposed, adopted, and even rejected, are also available on this page allowing you to trace the evolution of the rules in Virginia.

LEOs are searchable in a variety of ways. When you click on the link to the LEOs you are taken to a page maintained by the Virginia CLE division of the Virginia Law Foundation.⁵ Here you can pull up LEOs by number or you can search by subject. When you choose the subject search you are given the option to run an advanced Google search which permits Boolean searching and the ability to limit the search by date.

The other link to the LEOs directs you to a page maintained by the law firm of McGuire Woods.⁶ Here you find the LEO summaries prepared by attorney Thomas E. Spahn. Spahn, a partner at McGuireWoods, is a nationally recognized expert in the field of legal ethics. The database contains his summaries of not only the Virginia LEOs recognized by the VSB after its reorganization of the LEOs in 1983, but also the formal opinions issued by the ABA Standing Committee on Professional Responsibility. You can find opinions in this database in several ways. There is a topical table of contents that links to LEOs on an assortment of subjects. Then there is a link that will retrieve a list of all of the LEO summaries written in the past year. The database also supports keyword searching. When searching by keyword, you have the option of filtering the search by date or limiting the search to ABA or Virginia LEOs.

Finally, if you can’t find a LEO dealing with your specific concern, you can request one from the VSB. There is a link on both the “Professional Regulation” page and the “Members Resources” page which allows any member of the Virginia bar to request a LEO via e-mail. This service is confidential; ethics counsel for the VSB cannot disclose the contents of any discussion about the e-mail without the express consent of the person posing the question.

A free, to VSB members, source is Fastcase⁷. While LEOs and the rules are not part of the Fastcase database, Supreme Court of Virginia decisions are. As mentioned above, disciplinary matters are appealable to the Supreme Court of Virginia so you will find valuable content in this source.

Even though the print resources are easy to use, these days most lawyers prefer to do their research online.

No mention of free Internet sources would be complete without talking about Google. You could just throw some words into the search bar and come up with a few million hits. Simply searching “ethics opinions” results in some very good results, the ethics opinions of many state and local bar associations. A savvy Google user, however, would scroll to the bottom of the Google results page and click on the advanced



search option. Using this option allows you to easily do Boolean searching and limit the results by language, last updated, or, most helpful, by domain.

A search in Google for “internet advertising ethics opinions” garners slightly over twenty-four million hits. An advanced search for “internet ~advertising “ethics opinions” site:org” yields slightly more than seven thousand hits. The tilde before the word advertising pulls websites using synonyms for advertising, such as solicitation. By

Even with the wide assortment of resources, both in print and electronic available to you, sometimes you just want the human touch.

placing ethics opinions in quotes, Google will look for those terms as a phrase. Finally, since most bar associations, as well as the ABA, have a .org domain you know the results retrieved will be from reliable sites.

Google Scholar shouldn't be overlooked either. Running the above search using the Legal Document option in Google Scholar results in 762 hits. The results include court cases and articles from scholarly journals. Results can be further sorted by relevance or limited by date. You can select one of the dates provided or create a custom date range.

A mixture of free and paid resources are accessible at the webpage for the ABA Center for Professional Responsibility.⁸ On the home page of the center, any visitor can view or download the latest LEOs issued by the ABA. There is also a news section on this page which highlights recent articles on ethical issues. Under the “Resources” tab, the Model Rules of Professional Conduct along with the comments are available.

Non-members of the ABA can see a list of all of the formal LEOs issued by the ABA and individual opinions may be purchased for \$20. Members of the section are able to search the entire ethics database and download opinions free of charge. If a member doesn't want to search the database, he or she can take advantage of the center's EthicSearch Research System. The center's lawyers will research ABA, state, and local bar association opinions to assist a lawyer to understand or resolve any ethical issues.

In the ethics area, it doesn't matter if you subscribe to the legacy versions of Westlaw or Lexis or the newer WestlawNext or Lexis Advance.

All of the content in this area is available on both versions. To determine what is available in classic Westlaw, you click on “Directory” and open the tree for “Topical Materials by Area of Practice” and then the tree for “Legal Ethics and Professional Responsibility.” In WestlawNext you first click on “Secondary Sources” then “Texts and Treatises” and then “Ethics and Professional Responsibility.”

In Lexis.com, you can select the entry for “Ethics” under the heading “Area of Law by Topic” on the home screen. A full listing of all available titles is then displayed allowing you to choose to search in one or all of the databases. In Lexis Advance you first click on the “Browse Sources” tab. In the left hand frame, above the facets, is a search box. If you type in the word ethics, Lexis Advance will pull up all of the databases in which the word appears in either the heading or the database descriptor. The list of databases that appear can then be sorted by material type or jurisdiction.

Both Lexis and Westlaw have the full complement of ABA ethics materials, the model rules and the formal and informal LEOs. When it comes to Virginia research, Lexis has the edge. Both systems have the rules but only Lexis has the Virginia LEOs. Interestingly, Westlaw does have a file of the public disciplinary orders issued by the VSB.

There is an extensive collection of secondary sources available from each service. Both contain the *Restatement of the Law Third: The Law Governing Lawyers*. Westlaw has more general treatises dealing with the topic while Lexis has an “Emerging Issues” database dealing with hot topics in the area. Lexis also has the *ABA/BNA Lawyer's Manual on Professional Conduct* available.

Bloomberg Law is similar to Fastcase in its ethic content. The cases of the Virginia Supreme Court are present, but the rules and the LEOs are not part of the Bloomberg platform. Currently, there are not any treatises dealing with ethical issues on Bloomberg.

Even with the wide assortment of resources, both in print and electronic available to you, sometimes you just want the human touch. In Virginia, that's still possible. If you desire, you can call the Legal Ethics Hotline⁹ maintained by the VSB. When you call, you will be prompted to leave a detailed message and your call will be returned the same business day, if possible. The service is confidential and the lawyers employed by the VSB will provide you with an informal ethics opinion.

Conclusion

Being a lawyer is a difficult proposition. People tell you their darkest secrets or ask you to perform certain tasks for them. This may cause you to have information you feel compelled to share or to feel as if you're being pushed in a direction in which you hesitate to go. By using the resources outlined in this article you can assure yourself that your behavior is conforming to the ethical standards of the Virginia bar.

Endnotes:

- 1 As of this publication date, California has not adopted the Model Rules. The California State Bar is currently revising their Rules of Professional Conduct, taking into account the final report and recommendations of the ABA's Ethics 20/20 Commission, with the intent of eliminating conflicts between the rules in California and other states.
 - 2 Part Six, Integration of the State Bar, Section Two, Rules of Professional Conduct
 - 3 Part Six, Integration of the State Bar, Section One, Unauthorized Practice Rules and Considerations
 - 4 www.vsb.org
 - 5 <http://www.vacle.org/leoslegallinks-pg107.aspx>
 - 6 <http://leo.mcguirewoods.com/>
 - 7 <http://www.fastcase.com/>
 - 8 http://www.americanbar.org/groups/professional_responsibility.html
 - 9 (804) 775-0564
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