INTRODUCTION TO RULES OF PROFESSIONAL CONDUCT

History

In 1908, the American Bar Association approved a set of Canons of Ethics. These Canons were the first comprehensive attempt by the legal profession to formally self-regulate. For reasons explained in the casebook, the Canons were very unwieldy.

In 1969, the ABA adopted a new document, the Model Code of Professional Responsibility. The Code contained three types of provisions: Canons, Ethical Considerations (ECs), and Disciplinary Rules (DRs). The idea was that the Canons described general professional norms, the Ethical Considerations were aspirational, and the Disciplinary Rules set a floor for professional conduct.

It is important to note that the ABA cannot discipline lawyers. Its adoption of the Code, like the Canons before it and the Rules after it, is only advisory. In order for the Code (or the Canons, or the Rules) to be enforceable, it had to be adopted by the states. Every state adopted the Code, except for California, which adopted something similar.

In 1983, again in response to criticisms, the ABA adopted the Model Rules of Professional Conduct. The Rules contain black letter rules and explanatory comments. This new structure is much simpler than the structure of the Code. It is also similar to the structure of Uniform Laws and to the Restatements, so the format is familiar to lawyers.

Many, but not all states, have adopted some version of the Model Rules. In 1990, Illinois adopted the Illinois Rules of Professional Conduct. The Illinois Rules are based on, but are not identical to, the Model Rules adopted by the ABA in 1983. In addition, Illinois did not explicitly adopt the comments to the rules. The Illinois courts, however, sometimes view the ABA comments as persuasive authority in interpreting the Rules.

Between 1983 and 2000, the ABA made approximately 30 amendments to the Model Rules.

In 2002, the ABA adopted comprehensive amendments to the Model Rules.

We will call the Model Rules as they appeared before these 2002 amendments the “Old Model Rules” or “Old RPC.” They are also sometimes called the pre-2002 Rules. (Note, however, that the Old Model Rules are not identical to the Model Rules as originally adopted by the ABA in 1983 because the Old Model Rules reflect the 30 amendments made since then.)

In 2003, the ABA adopted additional amendments to Rules 1.6 and 1.13.

We will call the Model Rules as they appear after the 2003 amendments the “New Model
Illinois has not substantially amended its Rules since the ABA’s 2002 and 2003 amendments, but the Illinois Supreme Court has appointed a commission to recommend amendments. The current draft recommendations largely track the New RPC, but those recommendations have not been finalized. Once the recommendations are finalized, the Illinois Supreme Court will decide whether to accept them, reject them, or modify them.

**Timeline**

1908 ABA adopts the Canons of Ethics.

1908-1969 Canons expand and become increasingly unwieldy.

1969 ABA adopts Model Code of Professional Responsibility. In the following years, every state adopts the Code or something similar. Here is a link to the Code as it appeared in 1983, just before it was supplanted by the Model Rules of Professional Conduct. [http://www.law.cornell.edu/ethics/aba/mcpr/MCPR.HTM](http://www.law.cornell.edu/ethics/aba/mcpr/MCPR.HTM)


1990 Illinois adopts Rules of Professional Conduct that are **based on but not identical to** the ABA Model Rules.

1983-2000 ABA enacts approximately 30 amendments to the Model Rules.

In our class, the rules as they existed before 2002 are called the “Old Model Rules,” “Old RPC,” or “pre-2002 Rules.”

2002 ABA adopts comprehensive amendments to the Model Rules.

2003 ABA adopts additional amendments to Rules 1.6 and 1.13.

In our class, the rules as they existed after these 2003 amendments are called the “New Model Rules,” “New RPC,” or “current Rules.”

Both the Old and New RPC can be found at [http://www.law.cornell.edu/ethics/aba/](http://www.law.cornell.edu/ethics/aba/)
**What we cover and why.**

In our class, we will focus most of our attention on the New Model Rules and on the Illinois Rules of Professional Conduct (“Illinois RPC”) in their current form, with special attention to the differences between these different sets of Rules. Where there have been important modifications between the Old and New RPC, we will also cover the Old Model Rules.

We will cover provisions of the Code of Professional Responsibility only where they are relevant to understanding the development of the law in a particular area or on a particular subject. We will not study the substance of the 1908 Canons of Ethics.

We cover the New Model Rules because they are the gold standard for the profession and because they illustrate many of the important issues and trends in professional responsibility.

We cover the Illinois Rules because it is important to see how the Rules have been adapted and used in a particular state.

We cover the Old Model Rules for three main reasons.

1. The comments to the Old RPC are often persuasive authority for interpreting the Illinois RPC, at least where the Rules are identical. In general, Illinois has no comments of its own in its Rules. So where there are important differences between the Old and New RPC comments, we may look at the Old RPC.

2. Second, in some cases where Illinois has chosen to depart from the Old RPC, we will explore the significance of those differences.

3. Third, we can only understand the significance of changes made by the New RPC if we compare them to the Old RPC.

The different sets of Rules, however, have more similarities than differences. Therefore, we will often simply note that the same or very similar language is used in each version.