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.

In 1969, responding to complaints about the unwieldy nature of the Canons, the ABA adopted a new document, the Model Code of Professional Responsibility. The Code contained three types of provisions: Canons, Ethical Considerations, and Disciplinary Rules. 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.

The ABA does not have disciplinary authority over lawyers. In order for the Code 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.

In 1990, Illinois adopted the Illinois Rules of Professional Conduct. These Rules were based on, but are not identical to, the Model Rules adopted by the ABA. In addition, Illinois did not explicitly adopt the comments to the rules, although Illinois courts sometimes look at those 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.” (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. In 2009, the ABA adopted a significant amendment relating to Conflicts of Interest. We will call the Model Rules as they appear today the “New Model Rules” or “New RPC”, when necessary to distinguish them from the Old Model Rules. Otherwise, we will refer to them simply as the “Model Rules.”

As of January 1, 2010, Illinois has substantially amended its Rules. The new Illinois Rules are based on the New Model Rules but are not identical to them. These Rules now include comments.
**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.
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.
2002       ABA adopts comprehensive amendments to the Model Rules.
2003       ABA adopts additional amendments to Rules 1.6 and 1.13.
2009       ABA adopts additional amendments relating to Conflicts of Interest.
2010       Illinois adopts revised Rules of Professional Conduct that are largely based on but not identical to the Model Rules.

**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”), with special attention to the differences between them. 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.

In general, 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 demonstrate 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.

On occasion, we will also study the provisions from the Old Model Rules. We will do this when necessary to see how a particular provision or area of law has evolved.