

## Law of Lawyering Outline

### Model Rules: Origins and Evolutions, Plus Other Topics

- 1908—Canons of Ethics—terse, simple, and vague/incomplete
- 1969—Model Code—DRs=disciplinary rules; ECs=aspirational nonbinding commentary
- 1977—ABA sets out to revise
  - 1983—Model Rules are born.
  - Rules: disciplinary rule, can be enforced
  - Comments: nonbinding, but informative
- 2000—E2K
- 2013—intermediate tweaking of rules, “Ethics 2020”
- Now: ABA is looking at changes to advertising

### Current Model Rules

- Most states keep current with ABA amnds to Model Rules, but a few state’s rules are worded exactly same as ABA, and authorities in a state may interpret the same rule differently than the ABA or another state
- Some states adopted the MRs but with significant changes (GA)
- Two main components to rules: Rules and Comments
  - Rule 1.0—definitions, Preamble ¶ 14 and 15—shall and may difference
  - Ex: if rule says L who knows confidential info may reveal it to save life, L does not have to reveal it
- Most rules: (1) prohibition; (2) exception. Eg the general rule is that an L who knows C’s confidential info can’t reveal it, with some *permitted* and a few *required* exceptions (may or shall). If it is not permitted or req’d and the L reveals confidential info, L is subject to discipline
- Comments and Preamble ¶ 21
  - “Should” and Preamble ¶ 14—aspirational
  - Importance of comments in MPRE: if rule says “must” but comment says “should,” the comments turn “should” into “must”—cmnts are more important

### How to Read Rules/Comments

- First: Text of Rule. Preamble ¶ 14,15,18
- Then: Comments: comment structure (see cmnts to MR 1.6 and 1.7)
- And: state and local bar assocs issue opinions on state rules, ABA committee issues opinions on MRs, Restatement and Law Governing Lawyers. Court and bar decisions contain grievances, disqualifications (DQs), exclusions of evidence, sanctions

### Structure of MRs

- 1. C-L relationship; 2. Counselor; 3. Advocate; 4. Transactions with non-Cs; 5. Law firms and assocs; 6. Public service; 7. Info about legal services (ads); 8. Maintaining profession’s integrity

### Rules Applied or Interpreted in Different Context

- Rules are for discipline arising from grievance, which is: discipline does NOT require damage to C, but malpractice DOES
- Preamble ¶ 20: violation of rule does not itself give rise to claim nor create presumption that legal duty was breached, but b/c rules establish a “standard of care,” a violation can show a breach of duty, in for ex. a malpractice case against L

# The Law Of Lawyering

**Austin Sarat, Stuart A. Scheingold**



## **The Law Of Lawyering:**

**The Law of Lawyering** Geoffrey C. Hazard (Jr.), W. William Hodes, 1985      **The Law of Lawyering** Geoffrey C. Hazard, W. William Hodes, 2001      **Law of Lawyering** Hazard, Hodes, Jarvis, The Law of Lawyering shows how to approach concrete problems that arise in everyday practice while staying within the letter and spirit of the ABA Model Rules of Professional Conduct. It provides the full text of each Model Rule provision in sequence followed by the authors' guidance and commentary which put the rule into context, help identify its key features, and show its relation to other Rules and the ALI's Restatement of the Law Governing Lawyers. Clear realistic examples demonstrate how each Rule applies in practice. Substantially revised in this two-volume Fourth Edition to reflect the recent revisions of the Model Rules of Professional Conduct, this essential book reflects the latest developments in the law governing lawyer conduct, not only lawyer discipline but also legal malpractice suits for breach of fiduciary duty, fee dispute litigation, and fee forfeiture and disqualification of counsel for conflict of interest.      The Law of Lawyering Geoffrey C. Hazard (Jr.), W. William Hodes, Peter R. Jarvis, 2020-12-04 The Law of Lawyering shows how to approach concrete problems that arise in everyday practice while staying within the letter and spirit of the ABA Model Rules of Professional Conduct. It provides the full text of each Model Rule provision in sequence followed by the authors' guidance and commentary which put the rule into context, help identify its key features, and show its relation to other Rules and the ALI's Restatement of the Law Governing Lawyers. Clear realistic examples demonstrate how each Rule applies in practice. Substantially revised in this two-volume Fourth Edition to reflect the recent revisions of the Model Rules of Professional Conduct, this essential book reflects the latest developments in the law governing lawyer conduct, not only lawyer discipline but also legal malpractice suits for breach of fiduciary duty, fee dispute litigation, and fee forfeiture and disqualification of counsel for conflict of interest.      The Law and Ethics of Lawyering Geoffrey C. Hazard (Jr.), 2005 Extensively revised and updated The Law and Ethics of Lawyering provides an overview of the ethics of practicing law and discusses relevant provisions of the American Law Institute's Restatement of the Law Governing Lawyers. Many segments of the book are substantially enhanced, including the crime-fraud exception to the attorney-client privilege, disclosure of client identity, client fraud on third persons, or on a tribunal, regulation of excessive fees, the role of the government lawyer, responsibilities of the lawyer for a class form of practice, restrictions, regulation of multi-state and international practice, and choice of law in a multi-state practice.      **The Law of Lawyering in Washington** Tom Andrews, Robert H. Aronson, Mark Fucile, Art Lachman,      **The Law of Lawyering** Geoffrey C. Hazard, 1985      *The Law and Ethics of Lawyering* Geoffrey C. Hazard, Susan P. Koniak, Roger C. Cramton, 1994 This extensive revision will update this innovative casebook throughout, reporting the many important developments in the field since 1993, incorporating at many points an analysis of relevant provisions of the ALI Restatement of the Law Governing Lawyers. Many segments of the book are substantially redone, including the crime-fraud exception to the attorney-client privilege, disclosure of client identity,

furtherance of client fraud on third persons or on a tribunal regulation of excessive fees role of the government lawyer responsibilities of the lawyer for a class form of practice restrictions regulation of multi state international practice choice of law in multi state practice *The Law of Lawyering: The client-lawyer relationship* Geoffrey C. Hazard (Jr.), W. William Hodes, John S. Dzienkowski, John S. Redditt, Peter R. Jarvis, Law, Lawyering and Legal Education Charles Sampford, Hugh Breakey, 2016-10-04 Once a highly cosmopolitan profession law was largely domesticated by the demands of the Westphalian state But as the walls between sovereign states are lowered law is globalizing in a way that is likely to change law lawyering and legal education as much over the next 30 years when the students entering law schools today reach the peak of their profession as it has over the last 300 This book provides a sustained investigation of the theoretical and practical aspects of legal practice and education synthesizing and developing nearly thirty years of Professor Sampford's critical thought analysis and academic leadership The book features two major areas of investigation First it explains the significance of the critical theoretical and ethical dimensions of legal education and legal practice in making more effective practitioners placing ethics and values at the heart of the profession Second it explores the old new challenges and opportunities for ethical lawyers Challenges include those for lawyers working in large organisations dealing with issues from international tax minimisation to advising governments bent on war Opportunities range from the capacity to give client's ethical advice to playing a key role in the emergence of an international rule of law as they had to the domestic rule of law The book should stimulate great interest and occasional passion for legal practitioners students teachers and researchers of law lawyering legal practice and legal institutions Its interdisciplinary approaches should be of interest to those with interests in education theory international relations political science and government professional ethics sociology public policy and governance studies

*Foundations of the Law and Ethics of Lawyering* George Meredith Cohen, Susan P. Koniak, 2004 This work is a collection of articles that explore the tension between the law governing the conduct of lawyers and the complex ethics of lawyering that pulls against that law and competes with it This collection emphasizes the regulatory framework that has developed to govern the conduct of lawyers and draws heavily on the work of law and economics scholars *The Law of Lawyering* Geoffrey C. Hazard, **Cause Lawyering and the State in a Global Era** Austin Sarat, Stuart A. Scheingold, 2001 Cause lawyering is law as practised by the politically motivated and those devoted to moral activism This text examines the concept in a global context exploring ways in which it influences and is influenced by the disaggregation of state power associated with democratization and how democratization empowers lawyers who want to effect change **New York Court of Appeals. Records and Briefs.** New York (State)., **Lawyering from the Inside Out** Nathalie Martin, Joshua Alt, Kendall Kerew, Jennifer L. Laws, 2018-06-07 Through mindfulness and emotional intelligence lawyers can improve focus productivity interpersonal skills and find greater meaning in life Cause Lawyering Austin Sarat, Stuart A. Scheingold, 1998 Why do some lawyers devote themselves to a specific social movement or political cause What can we learn from such lawyers about

the relationship between law and politics CAUSE LAWYERING offers an insightful portrait of lawyers who sacrifice financial advantage in the name of a more just society These telling essays show how cause lawyering is indispensable to the legitimization of professional authority Inside Lawyers' Ethics Christine Parker, Adrian Evans, 2018-06-14 Inside Lawyers Ethics offers a practical examination of the moral and ethical dilemmas that legal professionals may encounter in the professional environment The text provides comprehensive coverage and analysis of general philosophical approaches to morality as well as the legal frameworks which govern ethical decision making and practice Beyond Legal Reasoning: a Critique of Pure Lawyering Jeffrey Lipshaw, 2017-03-27 The concept of learning to think like a lawyer is one of the cornerstones of legal education in the United States and beyond In this book Jeffrey Lipshaw provides a critique of the traditional views of thinking like a lawyer or pure lawyering aimed at lawyers law professors and students who want to understand lawyering beyond the traditional warrior metaphor Drawing on his extensive experience at the intersection of real world law and business issues Professor Lipshaw presents a sophisticated philosophical argument that the pure lawyering of traditional legal education is agnostic to either truth or moral value of outcomes He demonstrates pure lawyering's potential both for illusions of certainty and cynical instrumentalism and the consequences of both when lawyers are called on as dealmakers policymakers and counsellors This book offers an avenue for getting beyond or unlearning merely how to think like a lawyer It combines legal theory philosophy of knowledge and doctrine with an appreciation of real life judgment calls that multi disciplinary lawyers are called upon to make The book will be of great interest to scholars of legal education legal language and reasoning as well as professors who teach both doctrine and thinking and writing skills in the first year law school curriculum and for anyone who is interested in seeking a perspective on thinking like a lawyer beyond the litigation arena *The War Lawyers* Craig Jones, 2020-11-26 Over the last 20 years the world's most advanced militaries have invited a small number of military legal professionals into the heart of their targeting operations spaces which had previously been exclusively for generals and commanders These professionals trained and hired to give legal advice on an array of military operations have become known as war lawyers The War Lawyers examines the laws of war as applied by military lawyers to aerial targeting operations carried out by the US military in Iraq and Afghanistan and the Israel military in Gaza Drawing on interviews with military lawyers and others this book explains why some lawyers became integrated in the chain of command whereby military targets are identified and attacked whether by manned aircraft drones and or ground forces and with what results This book shows just how important law and military lawyers have become in the conduct of contemporary warfare and how it is understood Jones argues that circulations of law and policy between the US and Israel have bolstered targeting practices considered legally questionable contending that the involvement of war lawyers in targeting operations enables legitimises and sometimes even extends military violence **A Nation of Laws** Peter Charles Hoffer, 2010 An introduction to and meditation on the key concepts history evolution complexities and importance of law in

our nation s 233 year existence

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