

## A BRIEF HISTORY OF LEGAL ETHICS

Senior Counsel Section

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Senior lawyers in the Hillsborough County Bar Association have the opportunity to provide an example for legal ethics and professionalism for other lawyers in the Thirteenth Judicial Circuit. For inspiration, experienced lawyers often look to the American Bar Association (ABA), which has provided leadership in legal ethics and professional responsibility for over 100 years, through the adoption of professional standards as models of appropriate conduct.<sup>1</sup>

In 1908, the ABA adopted the *Canons of Professional Ethics* based principally on the Code of Ethics that had been previously adopted by the Alabama Bar Association.<sup>2</sup> The Preamble to the Canons sets the tone for the conduct of lawyers in the United States. “The future of the Republic ... depends upon our maintenance of Justice pure and unsullied.” “It cannot be so maintained unless the conduct and the motives of the members of our profession are such as to merit the approval of all just men.”<sup>3</sup> The 32 canons, among other things, touched on: The Duty of Lawyers to the Courts (Canon 1); Adverse Influences and Conflicting Interests (Canon 6); Restraining Parties from Improprieties (Canon 16); Candor and Fairness (Canon 22); and Upholding the Honor of the Profession (Canon 29). These

were eventually expanded to 47 canons, including Confidences of a Client (Canon 37).<sup>4</sup>

However, the *Canons of Professional Ethics* were not an effective teaching instrument and failed to give guidance to young lawyers beyond the language of the canons themselves.<sup>5</sup> So in 1964, then ABA President and later Supreme Court Justice Lewis F. Powell Jr. created a special committee to evaluate ethical standards. That committee produced the *Model Code of Professional Responsibility*, which was adopted in 1969 and subsequently approved by the vast majority of state and federal jurisdictions.<sup>6</sup> The code acquired the force of law only when it was adopted in a jurisdiction by a state authority, typically the state’s supreme court.<sup>7</sup>

The code had nine broad canons, including: A Lawyer Should Preserve the Confidences and Secrets of a Client (Canon 4); A Lawyer Should Exercise Independent Professional Judgment on Behalf of a Client (Canon 5); A Lawyer Should Represent a Client Competently (Canon 6); and A Lawyer Should Represent a Client Zealously within the Bounds of the Law (Canon 7). Following each canon were Ethical Considerations, which were aspirational, and Disciplinary Rules, which were binding.<sup>8</sup>

**It is from the example of more senior attorneys that today’s younger, less experience lawyers can create an ethical foundation for a legal profession which promotes civility and honesty among its members, as well as respect for the community at large.**

In 1983, the ABA approved the *Model Rules of Professional Conduct*, which were adopted in Florida in 1986. These *Florida Rules of Professional Conduct*, which closely follow the model rules, consist of approximately 60 rules each followed by a comment section.<sup>9</sup> Thus, it is the *Florida Rules of*

*Professional Conduct* that now provide lawyers with the essential guidelines for ethical behavior in Florida. Just as importantly, it is from the example of more senior lawyers that today’s younger, less experienced lawyers can create an ethical foundation for a legal profession that promotes civility and honesty among its members, as well as a respect for the community at large.

<sup>1</sup> *Model Rules of Professional Conduct*, at ix (Am. Bar Ass’n 2012).

<sup>2</sup> *Id.*

<sup>3</sup> *Canons of Professional Ethics*, at 1 (Am. Bar Ass’n 1908).

<sup>4</sup> *Id.*

<sup>5</sup> *Model Code of Professional Responsibility*, at x (Am. Bar Ass’n 1985).

<sup>6</sup> *Model Rules of Professional Conduct*, at ix (Am. Bar Ass’n 2012).

<sup>7</sup> Charles W. Wolfram, *Modern Legal Ethics* 56 (West 1986).

<sup>8</sup> *Model Code of Professional Responsibility* (Am. Bar Ass’n 1986).

<sup>9</sup> *Rules Regulating the Florida Bar*, Chapter 4 (2013).

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