

## Researching Ethics Issues - A List of General Sources

BY MARY C. DALY

In the March 2003 issue of NYPRR, I discussed those research sources which deal essentially with ethics issues falling under the New York Code of Professional Responsibility and New York statutes and case law. In this column, I will turn my attention to more general research sources dealing with ethics issues in a broader perspective. There are several reasons why a lawyer licensed to practice in New York may need to look beyond New York authorities to resolve an ethical dilemma: The lawyer may be licensed in more than one jurisdiction (for example, New York and New Jersey or Washington, D.C.); the lawyer may be admitted pro haec vice in another jurisdiction for a specific litigation; the lawyer may conclude that New York's jurisprudence is unsettled or unclear and look for guidance in another jurisdiction's resolution of a similar question; or the lawyer may simply be seeking insight into the way a particular issue is resolved in other jurisdictions.

In undertaking general research on an ethics question, a lawyer should first assess her basic familiarity with the issues facing her. If the lawyer's comfort level in her own knowledge is minimal, the best place to start would be a comprehensive treatise that can provide the needed background and overview. Several sources immediately come to mind.

After thirteen years of careful study and debate, the American Law Institute adopted a Restatement of the Law Governing Lawyers in 1998. The Restatement addresses issues of civil liability as well as issues of professional responsibility. Both the final and the interim drafts are comprehensively annotated and, consequently, are an excellent source of case law and ethics committee opinions.

All ABA-accredited law schools are required to provide "instruction in professional responsibility." Most law schools meet this standard by requiring their students to complete a 2- or 3-credit legal ethics course. These courses are centered on one or another of several excellent casebooks. Researchers who are looking for either (a) general coverage of a specific subject matter or (b) a multi-state perspective on controversial issues will find these casebooks invaluable. Among the most comprehensive of these casebooks are:

Steven Gillers, *Regulation of Lawyers: Problems of Law and Ethics* (Aspen Law & Business, 6th ed. 2002);  
Geoffrey C. Hazard, Jr., Susan P. Koniak & Roger C. Crampton, *The Law and Ethics of Lawyering* (The Foundation Press, Inc., 3d ed. 1999);

Thomas M. Morgan & Ronald D. Rotunda, *Problems and Materials on Professional Responsibility* (Foundation Press 7th ed. 2000);

Deborah L. Rhode & David J. Luban, *Legal Ethics: Cases and Materials* (Foundation Press, 3d ed. 2001);  
Roy D. Simon & Murray L. Schwartz, *Lawyers and the Legal Profession* (The Michie Company, 3d ed. 1995)  
Mortimer D. Schwartz, Richard C. Wydick & Rex R. Perschbacher, *Problems in Legal Ethics* (West Group, 5th ed. 2001).

Complimenting these casebooks are two highly respected treatises on professional responsibility: *Modern Legal Ethics* by Charles W. Wolfram (West Publishing Co. 1986) and *The Law of Lawyering* by Geoffrey C. Hazard, Jr. and W. William Hodes (Aspen Law & Business, 2d ed. 1990 & 1998 Supp.). While the Wolfram book is obviously out-of-date, it remains quite useful for readers seeking an overview of an issue. Of particular value are the model electronic research inquiries at the end of each section; they facilitate research on both WestLaw and Lexis. While the Hazard and Hodes text is also not current, it too contains useful background material.

If the inquiring lawyer feels generally familiar with the issue that is the subject of her research, the lawyer may want to proceed directly to sources that assume a minimum level of knowledge. Law review articles are often a good place to start. All law libraries will have available the *Index to Legal Periodicals and the Current Law Index*. Law review issues containing symposia on specific problems in legal ethics and lawyer regulation often provide an in-depth analysis far richer than that provided by isolated articles in different journals.

Five law reviews are dedicated to publishing articles, notes, and surveys on professional responsibility: *The Georgetown Journal of Legal Ethics*; *The Journal of the Legal Profession*; *The Journal of the Institute for the Study of Legal Ethics*; *The Notre Dame Journal of Law, Ethics, and Public Policy*; and *The Professional Lawyer*. In addition, specialized journals such as *Law Office Economics and Management Quarterly*; *Criminal Justice Ethics*; *Business Lawyer*; and *Environmental Lawyer* often publish articles on ethics and liability issues that frequently arise in specific practice settings.

Treatises and law review articles are especially helpful in exploring public policy debates and spotting current case law and regulatory trends. On many occasions, however, a lawyer will need to supplement them with pinpoint research built around state bar association ethics opinions, disciplinary proceedings, and federal and state cases. For these sorts of inquiries, the lawyer should consult the following sources.

*The ABA/BNA Lawyers' Manual on Professional Conduct* is a three volume looseleaf service. Volume 1 analyzes topical issues (e.g., qualifications, lawyer-client relationships, fees, etc.). Volume 2 consists of the biweekly Current Reports summarizing recent court decisions, ethics opinions, disciplinary proceedings, bar association activities and legislative actions. Volume 3 consists of digests of ethics opinions by state and local bar associations. It also gives a comprehensive list of addresses and telephone and fax numbers so that the full text of a digested opinion can be ordered. The ABA/BNA Lawyers' Manual also contains the full text of the opinions of the ABA Standing Committee on Ethics and Professional Responsibility.

The ABA Center for Professional Responsibility publishes the *Model Rules of Professional Conduct Annotated* (4th ed. 1999). It contains not only the full text of the Model Rules, but also citations to significant judicial decisions and bar association ethics committee decisions applying both the Model Code and the Model Rules.

*Legal Malpractice* (West Publishing Co., 4th ed. 1996) by Ronald E. Mallen and Jeffrey M. Smith is an exhaustive four-volume treatise exploring all aspects of legal malpractice. Researchers who are interested in understanding the relationship between ethics violations and malpractice should definitely consult this text.

Many continuing legal education programs regularly incorporate discussions of ethical dilemmas into their presentations and written course materials. Especially helpful are the materials that focus on particular practice settings (e.g., criminal, corporate, real estate law, etc.). Insightful commentary frequently appears in the publications of the Practising Law Institute (PLI) and the American Law Institute-American Bar Association (ALI-ABA).

*The American Law Reports (A.L.R.)* contains numerous case citations, especially in areas such as conflicts of interest, fees, and confidentiality.

*West's Federal Practice Digest* and most state digests have a topical compilation of cases usually under the headings "attorney and client" and "malpractice." The entries are sometimes difficult to work with, however, because of the publisher's overly general description of issues.

*Shepard's Professional and Judicial Conduct Citations* covers the Formal and Informal Ethics Opinions of the ABA's Standing Committee on Ethics and Professional Responsibility, provisions of the Code of Professional Responsibility, the Model Rules, and the Code of Judicial Conduct, and the Rules of Procedure of the ABA's Standing Committee on Ethics and Professional Responsibility.

*The National Reporter on Legal Ethics and Professional Responsibility* (Frederick, Md. University Publications of America, Inc.) is a multivolume looseleaf set and contains state bar ethics opinions, full and complete texts of state and federal court cases, current bibliographies of books, law review articles and other secondary source material, and a comprehensive ethics opinions index. Unfortunately, it is cumbersome and not always up-to-date. It is generally found only in law school and bar association libraries. Researchers should consult it only after they have exhausted all other sources. Some materials from the National Reporter are available on Lexis.

Finally, an inquiring lawyer should not neglect the Lexis and Westlaw electronic databases on legal ethics and malpractice. They are extraordinarily rich and can be mined on a national and state basis for cases, ABA and state bar association ethics opinions, and disciplinary opinions. Many of the sources described in the preceding paragraphs, such as the Restatement of the Law Governing Lawyers, the Index to Legal Periodicals, law review articles, and CLE course materials are available on Lexis and Westlaw as well

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