WHY NOT MODEL RULES OF CONDUCT FOR LAW STUDENTS?

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I. INTRODUCTION

For the past several years, the legal profession, or at least that part of the profession active in the American Bar Association (ABA), has engaged in a spirited debate over the proposed ABA Model Rules of Professional Conduct.¹ This debate will not end with the adoption of the Model Rules.² On the contrary, the discussion will intensify as the forum moves from the ABA to the states, and the Model Rules change from mere models to adopted binding rules.³ Obviously, many lawyers, especially those actively engaged in the practice of law, will become involved in any discussions that may cause them to alter their current professional behavior.

To a lesser extent, judges and law professors, most of whom are lawyers, will also be concerned about the impact that the new Rules may have on them. Even though there is a separate ABA Code of Judicial Conduct,⁴ judges must also adhere to any rules

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² The Model Rules of Professional Conduct were adopted by the House of Delegates of the ABA on August 2, 1983.

³ As of August 22, 1984, only two states had adopted the new Rules. ABA/BNA LAWYER'S MANUAL ON PROFESSIONAL CONDUCT, vol. 1, No. 19, at 433.

⁴ The Code of Judicial Conduct was adopted by the ABA House of Delegates on August 16, 1972.
governing the professional conduct of lawyers and must insure that the lawyers who practice before them act within appropriate ethical standards. Although law professors do not have a distinct code of conduct, they are bound by the rules governing the conduct of lawyers even though many of the rules may not be directly applicable to the role they perform as professional law teachers. In addition, most law professors will be involved in teaching students about the Rules, either in a separate course or pervasively through other courses in the curriculum. Thus, both judges and professors have been, and will continue to be, keenly interested in the current debate over the Rules.

Nevertheless, the legal profession does not consist entirely of practicing lawyers, judges, and law professors. Thus, rules of professional conduct should not be rules that govern only the ethical standards relating to the practice of law. The various roles that members of the profession assume within society go well beyond the practice of law, whatever the definition of "the practice of law" might be. Any rules governing the profession should reflect the fact that the profession is indeed diverse. Unfortunately, the new Model Rules, like the predecessor Model Code, do not accommodate this diversity because they were drafted primarily for practicing lawyers. Regulations regarding advertising, solicitation, fees, and other economic aspects of the practice of law, as well as the strict rules governing the role of a lawyer as a financial fiduciary, have no direct relevance to the nonpracticing lawyer. Moreover, because nonpracticing lawyers have neither been interested nor involved in the current debate, rules and ethical standards applicable to these other roles do not exist.

Just as practicing lawyers are investigating their position within the profession by reviewing ethical standards, other members of the profession should be engaging in similar dialogue in order to ascertain their professional obligations. Each of these groups, such as educators, legislators, administrators, government lawyers, and law students, needs to determine how it fits into the legal profession and what unique ethical standards it needs. The process could lead to a modification of the Model Rules or the development of a separate code of conduct for each of the subgroups within the

profession.

This article will examine one of these groups—law students. This group often has not been included as part of the legal profession, even though for both historical and practical reasons it should be. Indeed, an examination of the role of law students is an appropriate starting point because law students, like most non-practicing lawyers, do not have a high degree of professional independence and autonomy within a self-regulated profession. Therefore, if law students are to be treated as members of the legal profession, they need to adhere to rules of conduct which, because of the unique student role, cannot be identical to those rules of conduct designed to meet the needs of practicing lawyers. In addition, while in law school, students not only must learn about the ethical standards of the profession, but also must learn how to be professionally responsible.

This article examines the concept of professionalism as it relates to both lawyers and law students in order to ascertain the function and limitations of the law school in the professionalization process. The first section of the article separates "professional" and "responsibility" in order to demonstrate that students arrive at law school with their sense of responsibility substantially developed. This limits what a law school can do in attempting to inculcate professional responsibility. For this reason law schools now are questioning the current methods of teaching professional responsibility and are moving toward the inevitable position that the best way for students to learn professional responsibility is through experience. An effective way for students to experience responsibility is through the use of a professional code of conduct for students under which they are given greater responsibilities. Students should be treated as members of the profession with both rights and responsibilities; they must understand and meet their current professional obligations before they can be expected to perform the other diverse roles within the profession. The final section of the article contains proposed Model Rules of Conduct for Law Students.

II. PROFESSIONAL RESPONSIBILITY

A. The Concept of Professionalism

It is generally assumed that the student is in a professional school to become a member of that profession. Thus, the starting point should be an analysis of the concept of professionalism—an
elusive concept because of the variety of social and occupational roles that fall within this broad category, and because the concept cannot be defined by any single criterion. The most appropriate approach is to use a number of criteria to identify the characteristics of a professional rather than to attempt to define the term. There appears to be general agreement that a professional possesses the following characteristics:  

1. The professional is engaged in a full-time occupation that comprises his or her principal source of income.
2. The professional has a strong motivation or calling as a basis of choosing the career and has a lifetime commitment to the career.
3. The professional possesses a specialized body of knowledge and skills acquired during a prolonged period of education and training.
4. The professional makes objective decisions on behalf of a client in terms of general principles, theories, or propositions and acts for the objective needs of the client.
5. The professional places the needs of the client before any self-interest and thus makes the relationship one of mutual trust.
6. The professional demands autonomy of judgment of his or her own performance.
7. Professionals form professional associations that define criteria of admission, educational standards, licensing or other formal entry requirements, career lines within the profession, and areas of jurisdiction for the profession.

Typically, most practicing lawyers possess all of these characteristics. They are engaged in a full-time practice, with this being their principal source of income, and they have a lifetime commit-

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7. A more basic definition of “profession” that has been used for centuries is “the occupation which one professes to be skilled in and to follow,” or, more specifically, “the three learned professions of divinity, law, and medicine.” 8 The Oxford English Dictionary 1427 (1933). One commentator puts profession below vocation because profession is “what you hold yourself out to be” while vocation means “[w]hat you are called to be.” J. Pike, Beyond the Law 18 (1963).
ment to their career. Their specialized knowledge and training have been acquired through a prolonged period of education and experience and are used in a detached, neutral manner on behalf of clients who accept their services on the basis of trust and faith. Lawyers are highly autonomous and are willing to subject their decisions only to the review of other lawyers. Finally, lawyers have a strong ethical code and control entry into the profession, as well as standards within the profession, through various professional associations.8

Lawyers not engaged in the full-time practice of law may not precisely meet all of the above criteria because they have no "client" in the traditional sense.9 The roles that these lawyers perform may be too diverse to place into a definite professional framework. Nevertheless, the degree of autonomy these lawyers must maintain to fulfill the responsibilities of their respective roles is the key to determining their true professional status, which depends, in part, on the degree of dependence that "clients" have on their judgment as professionals. As an example, law professors, with their students as "clients," could be placed into the professional framework without difficulty even though their conduct might be governed within institutional norms established by their faculty peers rather than by the Code of Professional Responsibility that governs the conduct of lawyers practicing in the state in which a particular law school is located.10 Law professors, as professionals, have considerable autonomy, exercise independent judgment on behalf of their

8. The United States Department of Education has officially listed the Council of the Section of Legal Education and Admissions to the Bar as the "nationwide recognized accrediting agency" for professional schools of law. The highest court of each state sets standards for admission to the bar. Graduation from an ABA-approved law school meets the educational standards of every state. However, most states also require applicants for admission to meet a competency standard through a bar examination in accordance with court rules. A Review of Legal Education in the United States, Fall 1983: Law Schools and Bar Admission Requirements 1, 79-85 (1984) [hereinafter cited as REVIEW OF LEGAL EDUCATION].

The educational requirements for graduation from an accredited law school have been upheld by state and lower federal courts as being a "rational relationship" to fitness to practice law. Hackin v. Lockwood, 361 F.2d 499 (9th Cir.), cert. denied, 385 U.S. 960 (1966); Application of Urie, 617 P.2d 505 (Alaska 1980).

9. One commentator noted the problems in working for an unidentified client in a government setting:

Unlike the private lawyer, who can identify his duty of loyalty to an individual client, the government lawyer works for an abstraction, the identity of which is so diffused that the duty of loyalty is not only hard to identify, the harm to the government of obtaining a personal benefit is often difficult to perceive.


students, and are reviewed primarily by their colleagues. In selecting a law school, or in selecting a course from certain professors, the students, as clients, presume that the school administration and the faculty will act in their best interest. Thus, although students are not clients within the context of the traditional lawyer-client relationship, they depend on the professional judgment of the faculty and administration.

Law students do not have “clients” or others depending on their professional judgment. Yet, these students do possess many of the characteristics of professionals. Law school is a full-time endeavor for most law students. Both full-time and part-time law students are preparing for a full-time occupation. Their commitment can be demonstrated by the personal and financial sacrifice that most must make. Moreover, the educational process in law school is designed to give students the knowledge, skills, and attitudes they need to operate as professionals.

This professionalization process is gradual and continues throughout one’s career. Yet, the starting point in the process is when one begins to understand his or her role as a member of the profession and begins to accept the concomitant professional obligations. This process should start in law school. However, there are a number of limitations imposed on the law school that severely restrict the school’s role in the professionalization process.

One of the central problems faced by law schools is to prepare students for the diverse roles that society expects lawyers to fill. In many instances students do not know which professional roles they will assume later. This fact, along with the student’s desire to take courses that will be tested on the bar examination but which are not necessarily relevant to a specific role, coupled with resource restrictions imposed on the school, severely limits what students will learn during law school. To a certain extent, these limitations are imposed by the profession itself through its desire to remain homogeneous by having all lawyers emerge from the law school as

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11. Enrollment at approved law schools in 1983 was 127,195—102,188 full-time and 25,007 part-time students. Review of Legal Education, supra note 8, at 69.

experienced generalists, equally competent to handle any given case.\textsuperscript{13} To implement this desire, the profession, to some extent, has standardized the bar examination,\textsuperscript{14} has resisted specialization among its members,\textsuperscript{15} and has, in some ways, standardized law schools.\textsuperscript{16} All of these elements compound the problem of attempting to prepare students for a variety of possible roles.

Ironically, it was the unethical and illegal practices of a number of lawyers in government service roles during the Watergate episode that caused the entire profession to receive an avalanche of severe criticism. In turn, many members of the legal profession directed the blame at the law schools.\textsuperscript{17} The attack on law schools was two pronged: the failure to teach students the skills and

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14. At the present time, 46 states participate in the Multi-State Bar Examination, which is a 200-question, multiple choice test covering Constitutional Law, Contracts, Criminal Law, Evidence, Real Property, and Torts. Most states use this test in combination with essay questions.

15. See generally R. Zehnle, Specialization in the Legal Profession (1975); Brink, Let’s Take Specialization Apart, 62 A.B.A. J. 191 (1976); Fromson, Let’s Be Realistic About Specialization, 63 A.B.A. J. 74 (1977); Goldstein, The Unfulfilled Promise of Legal Education, in Law in a Changing America 157 (G. Hazard ed. 1968); Laumann & Heinz, Specialization and Prestige in the Legal Profession: The Structure of deference, 1977 Am. B. Found. Research J. 155; Pedrick, Collapsible Specialists, 55 A.B.A. J. 324 (1969). To a certain extent the resistance to specialization has abated somewhat in recent years with the recognition that de facto specialization already exists. Thus, a renewed focus on the issue relates to the wisdom of certification and special training. F. Zemans & V. Rosenblum, The Making of a Public Profession 71 (1981). The new Rule 7.4 retains the provisions of DR 2-105 except that it permits a lawyer to indicate the types of matters in which employment will or will not be accepted; the lawyer still may not state or imply that he is a specialist.

16. One commentator has remarked:

Rigidity refers to the fact that in any given law school most of the students are doing the same thing; exactly the same thing in the first year, much the same in the second, and only marginally different things in the third year. The defect of uniformity refers to the fact that not only do law students within any given law school do much the same thing, law students in every school are doing much the same thing. For a country as large and diverse as the United States, it is remarkable that law schools are as alike as they are. American legal education is characterized by the same courses, taught from the same books, by the same methods.


knowledge needed to perform various roles as lawyers, and the failure to produce lawyers with high standards of professional responsibility. 18 A discussion of the substantive knowledge one needs as a lawyer in a wide variety of roles is well beyond the scope of this article. 19 Instead, this article will examine what seems to be a common attribute of all lawyers as professionals, regardless of their particular job function—the high degree of "autonomy" that they have in their roles of practicing lawyer, judge, government or corporate lawyer, law professor, or adviser. Society allows lawyers to have this autonomy because of the need for independent legal advice given in an ethical and professionally responsible manner. This autonomy, which includes the power of self-regulation, is given on the assumption that the profession will develop appropriate ethical standards and its members will behave according to those standards, even when it is not possible to compel compliance. 20 Professionals are obligated to adhere to an ethical code of behavior. Whether a person acquires this sense of professional obligation before, during, or after law school, and the impact law school has in developing one's sense of professional obligation, requires additional analysis.

B. Responsibility

Having examined the concept of professionalism, a separate examination of responsibility is necessary before determining how professionalism and responsibility relate. Exploring this relationship enables one to understand more fully the problems inherent in attempting to teach students how to behave in a professionally responsible manner. The obvious problem is the end result of this educational process—responsible behavior. How do we get students to behave in a professionally responsible manner throughout

18. See authorities cited infra note 19.
20. Pipkin, supra note 19, at 247. One commentator distinguishes the law as "a public function, in a sense that the practice of the other professions, such as medicine, is not. Practicing lawyers do not merely render to the community a social service. . . . They are part of the governing mechanism of the state. Their functions are in a broad sense political." A. Reed, Training for the Public Profession of the Law 3 (1921).
their professional careers?  

In a personal sense responsibility consists of the trustworthiness or reliability of a person in regard to burdens, trusts, obligations, duties, and other charges that are laid upon the person. In addition,

trustworthiness has two aspects, one dependent on the other: that of fitness, ability, or suitability for being trusted, and that of worthiness to be trusted. Trustworthiness is worthiness of trust, reliance, dependence. The trustworthy person merits being entrusted with a trust. . . .

Worthiness to be trusted, and hence entrusted with a trust, is itself grounded on the first aspect of trustworthiness, namely, fitness, ability, or suitability for being trusted. This is the aspect stressed by the concept of reliability—a reliable person is one who may be relied upon to do what he is supposed to do.

Thus, responsibility, as a trait of character, "is the intrinsic moral constancy that manifests itself in the consistency of the person's behavioral endeavors to fulfill his or her obligations." In other words, a person having the character trait of responsibility attempts to fulfill any obligation that he or she is given. Responsibility as a character trait is fitness to be entrusted with a charge. Yet the question remains, can this character trait be learned?

In general, responsibility can be learned. However, the learning occurs in stages, based on the accumulation of a lifetime of experiences, with each stage building upon another. Research has identified five stages in the development of responsibility:

1. Responsibility for oneself as an independent organism.

2. Responsibility for one's behavior toward others in the immediate environment.

3. Responsibility rooted in the conscience.

21. "Education for responsible behavior is the educing of responsibility as a trait of personal character; a quality or disposition that manifests itself over a lifetime (or close to it) in a wide variety of responsible acts." Hofstadter, The Structure and Ground of Responsibility, in Approaches to Education for Character: Strategies for Change in Higher Education 3 (C. Faust & J. Feingold ed. 1969).

22. Id.

23. Id. at 4 (emphasis in original).

24. Id.
4. Responsibility that is rational and humanistic.

5. Responsibility to society: fidelity to social values.\(^{26}\)

The development of responsibility, in all of the above stages, depends upon the experience a person has in family, school, and community in the prior stages. Obviously, what is learned in the early stages becomes the foundation for further development. These formative years are crucial because of this foundation effect as well as because responsibility can be best instilled as a character trait early. To a certain extent, unless the character trait is established early, it may never be established at all. Moreover, once established firmly, the character trait cannot be altered easily, primarily because of the manner in which it is learned.

The child learns habits of responsibility in the early stages through being rewarded for what parents define as responsible behavior and through being punished for what parents regard as irresponsible behavior.\(^{26}\) The child distinguishes behavior based on resulting consequences, not on knowing the difference between right and wrong. As the consequences are consistently repeated, the behavior becomes an automatic response, in the nature of a habit, enabling parents to expect and trust the child to behave in a certain manner. The reliability of the child causes others to entrust the child with additional responsibility. As people move into the later stages of the process of character development, they may continue to learn through reward and punishment, but they also learn through empathy, imitation or role modeling, and identification, as responsibility takes on additional dimensions and becomes a habit.

At one level, responsibility is a pure habit, an automatic response to a situation. Because habits can be both good and bad, a person can be good or bad, responsible or irresponsible, virtuous or nonvirtuous, based on this automatic response. From an etymological standpoint, the term "responsibility" is derived from the verb "to respond."\(^{27}\) Aristotle points out that the name of moral virtue, ethike, is formed by a slight variation from the word for habit,

\(^{25}\) Havighurst, An Educator Looks at Education and Responsible Behavior, in Approaches to Education for Character: Strategies for Change in Higher Education, supra note 21, at 99-100.

\(^{26}\) Id.

\(^{27}\) "This word assumed a special significance in Roman law. A defendant, or his representative in court, 'responded' to a complaint filed against him by putting forth reasons and arguments designed to meet the plaintiff's charges and to justify his own conduct." E. Bodenheimer, Philosophy of Responsibility 5 (1980).
ethos. Habits are produced in us not by nature but by doing.  

[T]he virtues we get by first exercising them, as also happens in the case of the arts as well. For the things we have to learn before we can do them, we learn by doing them, d to perform various roles as lawyers, and the failure to produce lawyers with high standards of professional responsibility rate by doing temperate acts, brave by doing brave acts.

A habit becomes inbred, fixed, an automatic response, which is performed in a perfunctory and unthinking manner. Certain basic personal responsibilities may become habit. There is, however, a higher level of responsibility, a level requiring a higher cultivation. At this level there is a choice, and perhaps a conflict, between one’s own self-interest and other responsibilities. The response may not be automatic and may require consideration of several alternative courses of action. Yet, the responsible person meets his or her responsibilities, out of either a sense of concern or of accountability. Only the person who is concerned for, and cares about, the subjects and contents of his or her obligations is capable of acting responsibly in regard to them. In addition, the concept of responsibility has another dimension—accountability. Responsible people must account for that which they have done or have failed to do. The detrimental consequences of their actions are imputed to them, which leads to the imposition of sanctions. Accepting an obligation means agreeing to respond properly and accepting the consequences of an incorrect response. It is this willingness to accept obligations and their consequences that makes the person trustworthy.

At the same time, however, some individuals are not trustworthy, are not willing to accept obligations, and do not care about being responsible at any level higher than personal needs. For these individuals lack of responsibility is a trait of personal character. This trait, once completely developed, is difficult to change. In essence, not being responsible has become a habit.

From this discussion, it is obvious that responsibility as a character trait may have gone through extensive development by the time one starts a professional career. Furthermore, early childhood

28. Hofstadter, supra note 21, at 17.
30. Hofstadter, supra note 21, at 17.
experiences have a significant impact on the development of this trait, and one's lifetime experiences help to mold it.\textsuperscript{31} Thus, the professional school entrant arrives with this character trait in a certain stage of development, perhaps even almost fully developed. The trait may have developed in a manner that makes the person completely responsible, completely irresponsible, or somewhere in between. The problem for the law school is to take the sense of responsibility with which one comes into law school and combine it with professionalism.

III. Teaching Professional Responsibility

A. Impact on Law Students

To determine what to teach students, one must first determine what the students already know. As noted earlier, a student's basic traits of responsibility and integrity have already gone through an extensive period of development prior to entry into a professional school. Much of this development will be carried over into law school and into law practice. Thus, one manner of determining the ethical condition of law students is to compare law school entrants to third year students and to practicing lawyers in order to determine if the law school experience had any impact.

One study examined the experiences of the class of 1964 at four Eastern institutions.\textsuperscript{32} The respondents were asked how they believed they would react to a number of ethical problems. The findings indicated that when the class took up its formal law study, it responded almost identically to a cross-section of the practicing bar in its general conformity to principles of legal ethics as applied to some ethical dilemmas.\textsuperscript{33} However, ethical positions of law students did improve somewhat during law school. A comparison of the percentage of correct ethical responses given by each of the


\textsuperscript{33} Thielens, supra note 32, at 598.
groups is as follows:34

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<th>First Year</th>
<th>Third Year</th>
<th>Lawyers</th>
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<tbody>
<tr>
<td></td>
<td>54.4%</td>
<td>60.8%</td>
<td>52.8%</td>
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Moreover, the study indicated that individuals did not experience significant shifts in attitudes. Generally, the findings lead to several possible conclusions. First, there was a small but noticeable increase in the general level of ethical conformity while a student was in law school.35 Second, students, once they enter practice, are exposed to pressures from competitive older colleagues to cut ethical corners, which causes the increase that occurred in law school to disappear.36 This conclusion, if valid, will disappoint those who “believe that the best way to teach law students the ethical ideals of their future profession is to put them into the courts and law offices, as apprentices and assistants to practising attorneys.”37

Law students also start law school with certain preconceived notions about the role of lawyers and the legal profession. To a certain extent, these notions may mirror the attitude of the general public about the profession, an attitude which is not positive.38 In one study, thirty-two percent of first year law students at one major university believed that attorneys practice, at times, in an unlawful manner.39 This figure rose to forty-four percent for second and third year students.40 One can draw some very disturbing conclusions from this. First, if the general public believes that attorneys practice in an unlawful manner, some highly principled individuals may not elect to go to law school. Conversely, some individuals, because of their basic nature, might be attracted to what they perceive to be a less than honorable profession. Second, the more law students learn about lawyers and the profession while in law school, the more they believe attorneys practice in an unlawful manner.41 This may cause some to suggest that law schools

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34. *Id.* at 591, 599.
35. *Id.* at 593.
36. *Id.* at 599.
37. *Id.*
40. *Id.*
41. “Lawyers bend the system they enter and are bent by it; some stay and others leave, carrying their bent with them.” Riesman, *Law and Sociology: Recruitment, Training and Colleagueship*, 9 STAN. L. REV. 643, 669-70 (1957). One relatively recent study indicated that
should attempt to teach less about the profession.

B. Problems in Teaching Professional Responsibility

All of the problems previously mentioned create a dilemma for the law school attempting to meet a requirement to offer "instruction in the duties and responsibilities of the legal profession." Law students enter law school with a preconceived opinion about lawyers. Lawyers blame the law schools for not teaching students how to be ethical. Law school administrators feel that the basic moral values of their students are likely to already have been molded by their experiences in their homes, schools, and community, and that little can be done in law school to alter these values.

At the same time, students approach a course in professional responsibility somewhat negatively. First of all, it is a required course in which all students must enroll, even those who otherwise undoubtedly would take other courses they believe to be more rele-

42. ABA Standards for Approval of Law Schools § 302 (1983). In the aftermath of Watergate, the House of Delegates of the American Bar Association added Standard 302 of the 1973 ABA Standards.

Despite the addition of the new standard, most law schools were already offering this type of instruction. L. Lamborn, Legal Education and Professional Responsibility: A Survey of Current Methods of Instruction in American Law Schools 3 (1963). For a brief history of the teaching of legal ethics in American law schools, see M. Kelly, Legal Ethics and Legal Education 23-28 (1980). Other schools distributed ethical instruction throughout the curriculum using the "pervasive" approach. Pipkin, supra note 19, at 249. Although the accreditation standard does not specify how professional responsibility is to be taught, a 1977 survey of 156 accredited law schools (96% of all accredited) reported that in nearly every school compliance had been accomplished by offering a specific course (or courses) in professional responsibility. Goldberg, 1977 National Survey on Current Methods of Teaching Professional Responsibility in American Law Schools, in Pre-Conference Materials: 1977 National Conference on Teaching Professional Responsibility vii, xviii (S. Goldberg ed. 1977).


43. Pipkin, supra note 19, at 249.

vant. Moreover, the course itself is perceived to have a low status in the latent law school curriculum. "Courses in professional responsibility, to a statistically significant degree, were perceived by students as requiring less time, as substantially easier, as less well taught, and as a less valuable use of class time."

Practicing lawyers have a similar perception about the impact that their professional responsibility course has had on them. A recent study of practicing lawyers places professional responsibility behind upbringing and the influence of other lawyers in their offices. Clearly, general upbringing remains the dominant factor, which is consistent with the fact that a student arrives at law school with certain internalized values incorporated from prior experiences with others. These aspects of behavior, derived from internalized values, dictate, to a certain extent, how a person shall behave professionally. The importance of the influence of fellow lawyers should not be overlooked, however, because it indicates that all of one's values are not fully developed at the time one enters practice and that peer socialization can still have a notable

45. Pipkin, supra note 19, at 257-58 (based on a survey of 1,370 law students at seven law schools during 1975-76).

46. Pipkin hypothesized the existence of a manifest and a latent law school curricular hierarchy. The manifest curricular hierarchy is intended and explicit, consisting of such criteria as whether the course is designated as required or elective, the year in which a course is offered, the credit weight assigned to the course, and the priority for law school courses over courses from other schools. The latent curricular hierarchy is relatively unplanned and inexplicit. It is derived from cues, advice, feedback, and from the content of instruction. These together produce a hierarchy defined by three sets of norms—those involving intellectual tasks, those involving pedagogic methods, and those involving teaching quality. Id. at 252-53.

47. Id. at 257-58 (footnote omitted).

48. F. Zemans & V. Rosenblum, supra note 15, at 172. The present rankings are as follows:

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<thead>
<tr>
<th>Most Important</th>
<th>Second Most Important</th>
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<tr>
<td>General upbringing</td>
<td>61.6</td>
</tr>
<tr>
<td>Observation or advice from other attorney in your law office</td>
<td>21.5</td>
</tr>
<tr>
<td>Law school consideration of these topics</td>
<td>11.0</td>
</tr>
<tr>
<td>Observation or advice from other attorneys not in your law office</td>
<td>1.7</td>
</tr>
<tr>
<td>Advice from persons other than attorneys</td>
<td>0.0</td>
</tr>
<tr>
<td>Other</td>
<td>4.1</td>
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49. Watson, supra note 6, at 4.
impact.⁵⁰

Obviously, to these lawyers, law school seems to have had little impact in the development of their professional ethics. Even when law schools were evaluated separately, independent of the influence of other factors, only about forty-two percent of practicing attorneys gave their law school training some credit for helping to resolve questions of professional responsibility, despite the fact that eighty percent of these attorneys had taken the course in law school.⁵¹ Although this figure may disappoint legal educators, it does indicate that the course in professional responsibility has had some influence. Moreover, this low rating might be consistent with the value lawyers might place on other courses that they had in law school, one course being merely a part of an overall process. Law schools seem to be recognizing this and have begun searching for a better way to teach the course, admitting that a two or three hour course on the Code is not sufficient.⁵² Many law schools have grappled with implementing the “pervasive method.” This method is based on the theory that because students need more exposure to the issues relating to their public responsibility as members of the legal profession, the best way to teach professional responsibility is through the substantive or procedural courses taught in law school rather than in a separate course.⁵³ The use of perspective courses, in which students are exposed to the philosophical structures, core values, larger institutions, and social ends of the law, as well as the use of co-curricular activities, have been considered to

⁵⁰. This was consistent with a study that indicated that the professional environment most likely to affect the attorney’s understanding of professional responsibility, and presumably his or her behavior as well, is that professional environment most closely tied to one’s own practice. F. ZEMANS & V. ROSENBLUM, supra note 15, at 173 (citing J. CARLIN, CURRENT RESEARCH IN THE SOCIOLOGY OF THE LEGAL PROFESSION (1962); J. CARLIN, LAWYERS’ ETHICS: A SURVEY OF THE NEW YORK CITY BAR (1966); J. HANDLER, THE LAWYER AND HIS COMMUNITY: THE PRACTICING BAR IN A MIDDLE-SIZED CITY (1967); Becker, The Nature of a Profession, in EDUCATION FOR THE PROFESSIONS: THE SIXTY-FIRST YEARBOOK OF THE NATIONAL SOCIETY FOR THE STUDY OF EDUCATION 27 (N. Henry ed. 1962)).

⁵¹. F. ZEMANS & V. ROSENBLUM, supra note 15, at 176. The study notes that the national law schools are given less credit than the nonnational schools.

⁵². For a criticism of the lecture or case method of teaching professional responsibility, as well as on the law schools teaching the subject at all, see Currie, Reflections on the Course in the Legal Profession, 22 J. LEGAL EDUC. 48 (1969).

⁵³. See L. LAMBORN, supra note 42, at 7-8; J. STONE, LEGAL EDUCATION AND PUBLIC RESPONSIBILITY 240 (1959); de Capriles, A Report on the Inter-Professions Conference, 1 J. LEGAL EDUC. 176 (1948); Pipkin, supra note 19, at 274-75; Smedley, The Pervasive Approach on a Large Scale—“The Vanderbilt Experiment,” 15 J. LEGAL EDUC. 435, 437 (1963). For an attack on the pervasive system see Starrs, Crossing a Pedagogical Hellespont Via the Pervasive System, 17 J. LEGAL EDUC. 365 (1965).
be appropriate vehicles for teaching about the profession.\textsuperscript{54} More recently, law schools have been looking at clinical courses as a means of teaching professional responsibility,\textsuperscript{55} because in these courses a student is placed in the role of a lawyer with a live client, putting the student in a position to experience real ethical problems.

Thus, law schools have started to move toward the inevitable position that the best way for students to learn professional responsibility is to experience it.\textsuperscript{66} This experience may take many forms throughout the educational process. The conversion of college graduates into lawyers is a complex and pervasive process. It includes more than intellectual development and skills training. This process of “professionalization” must include changes in personality, values, work habits, and social roles.\textsuperscript{67}

Nevertheless, legal education may not be able to professionalize all students to the degree necessary to make them professionally responsible. This failure on the part of the law school may be attributable to the early character development of the student, which cannot be changed, and is consistent with the views of those who believe that moral character is malleable only at an early age and is not susceptible to later change. On the other hand, even if legal education can alter the character trait of responsibility to some extent, the change might not be sufficient to make some students professionally responsible.

Even though socialization continues throughout the life cycle, “strong evidence indicates considerable persistence of early developed values, reasoning processes, and modes of behavior.”\textsuperscript{58} Thus, “effective resocialization may be problematic.”\textsuperscript{69} If the law school is unable to resocialize students, or can do so only to a limited

\textsuperscript{54} Perspective Course and Co-Curricular Activities, 41 U. Colo. L. Rev. 398 (1969).
\textsuperscript{56} See generally W. Pincus, Clinical Education for Law Students (1980).
\textsuperscript{57} Boyer & Cramton, supra note 32, at 257. In other words, the goal of legal education should be to produce a lawyer who has all of the characteristics of a professional in order to assume a professional role. Having a sense of professional responsibility is just one of the characteristics, yet one of paramount importance because it indicates a person’s willingness, readiness, and fitness to meet professional obligations and to perform in a professional role.
\textsuperscript{59} Id.
degree, the remaining alternative is to develop a framework in which to identify those students who may not be responsible so that they can be removed from the profession. The law school socialization process is directed at providing students with a core of attitudes, values, and norms about how a lawyer should behave, as well as information about the demands and pressures on a lawyer in specific roles, allowing the student to determine how he or she fits into the setting.60 Clearly, some students will discover their own unsuitability and will withdraw voluntarily from the educational process. At the same time, the law school, as well as other members of the profession, have a similar duty—to discover those who do not fit in and resocialize them to meet the obligations of the profession or to remove them from the process.61

The law school admission process is not capable of identifying those students who may not be responsible. Moreover, efforts at isolating law students with those “character traits” that would lead to future professional misconduct have not been successful because any predictive test also incorrectly identifies and includes an excessive number of nonviolators.62 Instead of attempting to predict future misconduct, a renewed emphasis could be placed on analyzing actual student misconduct, for there might be a close correlation between a law student who does not meet the professional obligation of a student and a lawyer who does not meet professional obligations.

This does not necessarily mean that the law school should attempt to modify the attitudes, values, and beliefs of a student and, if the attempt fails, eliminate that individual from the legal profession. Rather, both the law school and law students must recognize

60. Pipkin, \textit{supra} note 19, at 267 n.32.
61. In the case of those with little integrity, before the law schools can inculcate professional responsibility they would first of all have to provide a minimum standard of moral conduct. This is not simply a matter of supplying information. This is a question of providing basic motivation. Once the motivation for general moral conduct has been imparted, then comes the aspect of providing the information which will in turn provide the motivation for fulfilling the specific type of moral conduct known as professional responsibility. No matter what the student’s background, he will have to be provided with a minimum reorientation by reason of the fact that he is now coming into possession of new knowledge, that of law.
M. McManus, Inculcation of Professional Responsibility in Law School 71 (J.S.D. dissertation, New York University School of Law (1961)).
that membership in a profession requires each member to meet certain minimal standards below which none should fall and below which some form of sanction is likely to follow. A profession may well have high ethical goals toward which all are encouraged to aspire, but it must also have minimal standards of conduct. Lon Fuller distinguishes these as the morality of aspiration and the morality of duty:

Where the morality of aspiration starts at the top of human achievement, the morality of duty starts at the bottom. It lays down the basic rules without which an ordered society is impossible, or without which an ordered society directed toward certain specific goals must fail of its mark. . . . It does not condemn men for failing to embrace opportunities for the fullest realization of their powers. Instead it condemns them for failing to respect the basic requirements of social living.63

Lawyers must meet certain minimal standards. Law students, as members of the legal profession, should also meet the minimal standards set for them and should aspire toward higher goals.

Therefore, the best way to learn professional responsibility is by being professionally responsible. Students can best learn how to adhere to rules of professional conduct by adhering to rules. However, in order to do this students must understand their role as members of the legal profession and must meet all of the obligations associated with membership, including aspiring toward the higher goals and meeting the minimal standards of the profession. In order to accomplish this, law schools must teach students about their role as members of the legal profession and must give students the opportunity and obligation to be professionally responsible.

IV. LAWYERS AND LAW STUDENTS AS MEMBERS OF THE LEGAL PROFESSION

A lawyer's sense of professional responsibility is a commitment to a profession and is a product of a lifetime of experiences, education, and training. A lawyer does not gain suddenly the requisite level of competence and a sense of dedication to the profession just by being graduated from a law school or by being admitted to a bar. One is not transformed magically into a professional; the pro-

cess of professionalization is gradual, acquired over a lifetime. Unfortunately, some lawyers complete law school and gain admission to the bar without ever having acquired a commitment to meet the minimal standards of the profession. The reason for this may be that these individuals entered law school without ever having acquired the character trait of responsibility. One cannot be professionally responsible without first being responsible.

Without a doubt, law school plays a significant part in the professionalization process by assisting many students in gaining the attitudes, values, and skills necessary to perform professional roles. The professional is expected to perform certain kinds of operations and to maintain certain attitudes that are a part of this role. Clients, or others being served by the lawyer, expect behavior consistent with this role. This factor of role along with that of the identity of the individual are of paramount importance in the determination of professional behavior. Identity is actually a set of factors that "is an internal image made up of self-expectations, goals, and values, which is the product of individualized experience, training, and emotional development as fostered and shaped by significant influences." Clearly there will be times when professionals will find themselves in situations in which their self-interests, as shaped by identity, will conflict with their professional roles. In a majority of these situations, the professionals must resolve these conflicts on their own, guided by their sense of professional responsibility within the framework of a code of professional behavior. A true professional in this stressful position will put aside self-interest. Can the law school be expected to teach a person to do this?

Generally, law school does expose students to the role of the professional by encouraging students to examine the role of lawyers and putting them into simulated lawyer roles throughout the educational process. Much of what students learn centers on the work performed by lawyers and the role of law and lawyers in society. Students are exposed to numerous lawyers, most of whom serve as valuable role models by their willingness to set aside their own self-interests in order to achieve professional objectives.

Law schools also attempt to put students into these roles to ex-

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64. Watson, supra note 6, at 2.
65. Id.
66. "[T]o put the student into the role in which he is later going to find himself... is building bridges, to make the problem real to him,—not merely in verbal terms, but in terms of his own emotions and his own action." J. Stone, supra note 53, at 266.
percieve the conflict one can be exposed to as a professional. As an example, in teaching professional responsibility, many law schools use the problem approach, in which students discuss how they would react if placed into an ethical dilemma.

In this manner, students grapple with issues and learn how the professionally responsible lawyer would respond in a similar situation. This enables students to relate the problem to their own identities, to recognize that a conflict exists, and to attempt to resolve it. All of these elements prepare a student to deal with conflict later in a real setting, which makes the problem approach pedagogically sound. However, a student’s response in a simulated setting in no way assures that the response would be similar when that same student later confronts an identical problem as a lawyer. Influential outside pressures in a real setting may lead to a different response.

An analogous situation arises in professional responsibility problems derived from clinical courses where the student might respond differently if some of the educational restrictions were removed. Nevertheless, the clinical approach is a more appropriate vehicle for teaching professional responsibility than a traditional law school course or the problem approach. Students in clinical courses are placed in real settings and their reactions to ethical problems might approximate more closely their true responses, because “exposure to a problem as it appears in real life is the most effective way of arousing student interest, concern and a feeling of responsibility about that problem.”

67. Dr. Watson suggested that the teaching of professional responsibility should not be limited to the traditional course which merely presents the Code of Ethics in a highly intellectualized form. Instead there should be many occasions in classes when a student’s attention will be focused on learning how to feel, consciously identify, and acknowledge the normal and inevitable self-seeking inclinations and conflicts. Many opportunities should be offered to encounter and struggle with the knotty ethical conflicts which arise so often in law practice. Watson, supra note 42, at 445 (emphasis in original).


69. See supra note 55 and accompanying text.

70. Sacks, Education for Professional Responsibility: The National Council on Legal
students encounter during law school could be used as part of the professionalization process, both in terms of assisting an individual student as well as benefiting others who share in the experience. While in law school students are exposed to many personal problems and constantly find themselves in stressful situations in which their own self-interests may conflict with their obligations as students. Their reactions to these problems may be important indicators of future behavior. This is not meant to suggest that students should intentionally be placed in additional stressful situations in order to observe their reactions. On the contrary, students should be treated as members of a profession, a profession that is self-governing with established norms of behavior set forth in appropriate rules of conduct which establish aspirational goals and minimal standards of performance. Professionals need to grapple with their professional problems. Students need to be treated as professionals so that they will learn to behave as professionals.

The starting point in this process is when students begin to understand their roles as members of the profession and to accept the accompanying professional obligations. Students need to identify their responsibilities as students, establish norms of acceptable behavior, set minimal standards of performance and aspirational goals, and become more self-governing in an association of professional peers. The law school must view the students, and the students must view themselves, as members of a profession. Law students are new members of the profession and, as such, should progressively receive additional responsibilities as they demonstrate trustworthiness and reliability. Students could be given more responsibility and could be treated more professionally through the use of an honor code system that goes beyond the traditional scope of academic dishonesty by allowing students to govern many areas of their own professional conduct. Students must begin to accept the obligations that they will be required to accept as lawyers.

If the law schools are to be professional training grounds for lawyers, they must create an institutional framework which allows students to govern and set standards for themselves. Moreover, students should be involved in the creation of this institutional structure, for “it would be a mistake to allow students to play a purely passive role, responding only to the formal rules of the school or to the values that their teachers establish through their

own conduct. Nor should student professional standards be solely a matter of faculty-imposed standards." Law schools must treat students as professionals if students are to respond as professionals.

There seems to be general support for this concept at law schools. A survey of law students and legal educators indicated that both groups strongly agree that law students should be involved in administering a code of conduct and that when students are involved in the code process they perform in a responsible manner. Moreover, a majority of the respondents felt that increasing students' involvement in the process would increase their sense of professional obligation and responsibility both in law school and as lawyers, which would lead to a greater concern about maintaining the integrity of the profession and the competence of the members.

The concept of treating students as professionals is not new. From an historical standpoint, law students in England were treated as part of the legal profession and were members of one of the Inns of Court. In addition, the idea of giving law students more responsibility is not of recent origin, for some law schools had an honor system as early as 1842. Finally, the concept of having student organizations is not new, for most law schools have a student bar association or the equivalent, and there has been a national law school association since 1949.

71. Redlich, supra note 5, at 219.
72. A summary of this survey is contained in the Appendix.
73. In England, law was taught through the Inns of Court, each composed of three distinct groups: (1) Benchers, senior members of the bar; (2) Barristers, or outer barristers, the advanced students of the Inn; and (3) Students, or inner barristers, the juniors or novices of the Inn. Bastian, The Profession of Law in England and America: Its Origins and Distinctions, 46 A.B.A. J. 817, 817-18 (1960). See Smith, Law Students Are Members of the Legal Profession, 33 N.Y. St. B.J. 336 (1961).
74. Dean Lile at the University of Virginia noted the effect of an honor code that was implemented in 1842: "Not only has the problem of securing honesty in the examinations been solved, but incidentally many other problems of student government. The spirit of truth and honor fostered in the examination room has gradually pervaded the entire life of the institution." Lile, The Honor System, Am. L. Sch. Rev. 456, 461 (1910). Dean Lewis of the University of Pennsylvania observed:

All will admit that the honor system, throwing, as it does, moral responsibility on the individual, will tend to elevate him, if he is strong enough to bear it. It will in like manner do good to the school, if conditions are right—if the students are willing to take up and carry the responsibility involved.

75. The ABA has had a law student division since 1967. A predecessor organization, the American Association of Law Students, existed from 1949 to 1967. In encouraging the estab-
Students are not only a part of the legal profession; they are the future of the profession. As such, students have the task of learning how to be professionally responsible. This cannot be learned through lecture or by reading—it can only be learned through the experience of knowing and understanding one’s professional obligations and faithfully carrying out these duties. At the same time, legal educators cannot teach professional responsibility solely by lecturing and giving reading assignments. Professional responsibility can be inculcated only by giving students responsibilities and by cultivating their professional and ethical growth.

The development and use of an ethical code of conduct for law students may be an appropriate vehicle through which law students may gain additional responsibility. However, such a code is not a panacea for instilling professional responsibility in law students. Rather, it should be just one part in the overall process of professionalization, which must include a number of components. Yet, the development of an ethical code is an important component, for it recognizes that students will have a difficult time in fulfilling later professional roles if they do not understand their current professional role. In presenting proposed model rules of conduct, my hope is to stimulate discussion so that students can consider their role, define that role, and live within that role to attain more autonomy and grow professionally.

V. INTRODUCTION TO THE MODEL RULES OF PROFESSIONAL CONDUCT FOR LAW STUDENTS

Before reviewing the model rules that follow, it is important for the reader to be aware of, and to give consideration to, some of the underlying considerations upon which this model is based. In part, this explanation anticipates some, but perhaps not all, of the criticism that will be leveled. The real reason for this brief introduction, however, is an attempt to focus discussion on what the model is and what it is not.

First, the term “model” is somewhat of a misnomer. It was not designed by a blue ribbon committee representing various constituencies within the profession. Nor was it suggested, approved, or even considered by the Law Student Division or any other section

lishment of a law student division, an editorial noted: “These law students are undeniably a real part of legal profession, yet in the past the American Bar Association has had no form of student membership, affiliation or sponsorship.” The Foundation of Our Profession, 35 A.B.A. J. 316, 316 (1949).
of the ABA. Much of the explanatory language was taken directly or modified from the recently adopted ABA Model Rules of Professional Conduct. Some of the ideas for the specific rules came after a review of the current codes in operation at approximately one hundred American law schools and after consultation with a number of faculty and students from several law schools.

The adoption of much of the language from the ABA Model Rules for lawyers may assist law students in understanding the role of the lawyer. It may also serve as a transition as law students change to the role of lawyer, because they will be familiar with the language, format, and approach used to govern professional conduct. In addition, the experience in self-regulation and the assumption of more professional obligations is part of the professionalization process that should occur in law school and will aid students to assume professional obligations later.

Yet, this article does not recommend any specific course of action for students or the law schools to follow in order for students to assume a larger professional role or to develop model rules of conduct. At the student level, discussions should occur first at a national level rather than at individual law schools in order to elevate the professional status of all law students. Perhaps the ABA Law Student Division could follow the procedure that the ABA used to implement the new Model Rules of Professional Conduct so that a true model could be created for discussion at individual law schools. These rules would not be mandatory and could be considered and modified to meet the needs of individual schools.

Undoubtedly, any consideration of the Rules leads to a discussion of enforcement proceedings and law students' rights. These areas are not discussed in this article. Clearly, students have rights, as do lawyers. These rights should be protected by establishing appropriate safeguards for disciplinary hearings at each law school.

76. The Committee on Student Rights and Responsibilities, appointed by the Law Student Division of the ABA, did complete a draft Model Code of Student Rights, Responsibilities, and Conduct in 1969, which was not submitted to the House of Delegates or approved by the Division. The code concentrated on student rights. Only § 5 of the proposed code touched on responsibility:

   A. Students are responsible for learning the content of any course for which they are enrolled.
   B. Requirements of participation in classroom discussion and submission of written exercise are not inconsistent with this section.

77. Lawyers can be disciplined for committing a criminal act that reflects adversely on the lawyer's honesty, trustworthiness, or fitness as a lawyer in other respects. Model Rules of Professional Conduct Rule 8.4(b) (1983). To discipline law students for criminal activities is consistent with professional standards but not with the rights of ordinary students.
Nevertheless, rights are not the same as responsibilities. All too often discussion regarding students' rights and responsibilities gives little attention to responsibilities. In addition, law students are not merely students, but members of the legal profession. Thus, they must increase and accept their obligations and elevate their standards. Law students, in order to elevate their professional status, must begin to address their professional role as students. They can only do this by defining and meeting their professional responsibilities.

MODEL RULES OF PROFESSIONAL CONDUCT FOR LAW STUDENTS

PREAMBLE: A STUDENT'S RESPONSIBILITIES

A law student is part of the legal profession. As such, a law student has the principal responsibility of preparing himself or herself to assume the additional responsibilities of a lawyer.

A lawyer is a representative of clients, an officer of the legal system, and a public citizen having special responsibility for the quality of justice. A student must be prepared to fulfill all of these roles.

In all professional functions a student should be competent, prompt, and diligent. In addition, a student's conduct should conform to the requirements of the law, both in the student's professional obligations and in the student's business and personal affairs. A student should use the law's procedure only for legitimate purposes and not to harass or intimidate others. A student should demonstrate respect for the legal system and for those who serve it, including judges, lawyers, other students, and public officials. A student has a duty to uphold legal process.

As a public citizen, a student should seek improvement of the law, the administration of justice, and the quality of service rendered by the legal profession. As a part of the legal profession, a student should cultivate knowledge of the law beyond its use in the classroom, employ the knowledge in reform of the law, and work to


strengthen legal education. A student should be mindful of deficiencies in the administration of justice and of the fact that the poor, and sometimes persons who are not poor, cannot afford adequate legal assistance and should therefore devote time and civic influence on behalf of these people, both while in law school and in the future.

Many of a student’s professional responsibilities are prescribed in the Rules of Professional Conduct for Law Students. However, a student is also guided by personal conscience and the approbation of professional peers. A student should strive to attain the highest level of skill, to improve the law and the legal profession, and to exemplify the legal profession’s ideals of public service.

The legal profession is largely self-governing. Although other professions also have been granted powers of self-government, the legal profession is unique in this respect because of the close relationship between the profession and the processes of government and law enforcement. This connection is manifested in the fact that ultimate authority over the legal profession is vested largely in the courts.

Self-regulation also helps maintain the legal profession’s independence from government domination. An independent legal profession is an important force in preserving government under law, for abuse of legal authority is more readily challenged by a profession whose members are not dependent on government for the right to practice.

Most law schools are regulated by the profession. The highest court in each state defines the rules for admission to be a member of that state’s bar. Most of these courts defer to the American Bar Association Section on Legal Education and Admissions to the Bar to approve the educational programs of law schools. Law faculty, most of whom are members of the legal profession, implement the educational program and insure that appropriate academic standards are maintained. Law students, as members of the legal profession, are responsible for meeting the academic standards and for observing the Rules of Professional Conduct for Law Students.

The legal profession’s relative autonomy carries with it special responsibilities of self-government. Students should assume some of this responsibility while in law school by participating in the development and enforcement of the Rules of Professional Conduct for Law Students. Every student is responsible for observance of these Rules. A student should also aid in securing the observance of the Rules by other students. Neglect of these responsibili-
ties compromises the independence of the profession.

SCOPE

The Rules of Professional Conduct for Law Students are rules of reason. They should be interpreted with reference to the purposes of legal education and of the law itself. Some of the Rules are imperatives, cast in the terms “shall” or “shall not.” These define proper conduct for purposes of professional discipline. Others, generally cast in the term “may” or “should,” are permissive and define areas under the Rules in which the law student has professional discretion. No disciplinary action should be taken when the student chooses not to act or acts within the bounds of such discretion. Other Rules define the nature of relationships between the student and others. The Rules are thus partly obligatory and disciplinary and partly constitutive and descriptive in that they define a student’s professional role. Many of the comments use the term “should.” Comments do not add obligations to the Rules but provide guidance for performing in compliance with the Rules.

The Rules presuppose a larger legal context shaping the student’s role. That context includes court rules and statutes relating to matters of licensure, and substantive and procedural law in general, rules set out by the faculty of the law school, and university regulations. Compliance with the Rules, as with all law in an open society, depends primarily upon understanding and voluntary compliance, secondarily upon reinforcement by peer and public opinion, and finally, when necessary, upon enforcement through disciplinary proceedings. The Rules do not, however, exhaust the moral and ethical considerations that should inform a student, for no worthwhile human activity can be completely defined by legal rules. The Rules simply provide a framework for the ethical conduct of law students.

Failure to comply with an obligation or prohibition imposed by a Rule is a basis for invoking the disciplinary process. The Rules presuppose that disciplinary assessment of a student’s conduct will be made on the basis of facts and circumstances as they existed at the time of the conduct in question and in recognition of the fact that a student often has to act upon uncertain or incomplete evidence of the situation. Moreover, the Rules presuppose that whether or not discipline should be imposed for a violation, and the severity of a sanction, depend on all the circumstances, such as the willfulness and seriousness of the violation, extenuating factors, and whether there have been previous violations.
Violation of a Rule should not give rise to a cause of action nor should it create any presumption that a legal duty has been breached. The Rules are designed to provide guidance to students and to provide a structure for regulating conduct through disciplinary agencies. They are not designed to be a basis for civil liability. Furthermore, the purpose of the Rules can be subverted when they are invoked by opposing parties as procedural weapons. The fact that a Rule is a just basis for a student’s self-assessment, or for sanctioning a student under the administration of a disciplinary authority, does not imply that an antagonist in a collateral proceeding or transaction has standing to seek enforcement of the Rule. Accordingly, nothing in the Rules should be deemed to augment any substantive legal duty of students or the extra-disciplinary consequences of violating such a duty.

The Comment accompanying each Rule explains and illustrates the meaning and purpose of the Rule. The Preamble and this section on Scope provide general orientation. The Comments are intended as guides to interpretation, but the text of each Rule is authoritative.

**TERMINOLOGY**

“Belief” or “Believes” denotes that the person involved actually supposed the fact in question to be true. A person’s belief may be inferred from circumstances.

“Cheating” means intentionally using or attempting to use unauthorized materials, information, or study aids in any academic exercise, or exceeding any limits set for an examination.

“Fabrication” means intentional and unauthorized falsification or invention of any information or citation.

“Fraud” or “Fraudulent” denotes conduct having a purpose to deceive and not merely negligent misrepresentation or failure to apprise another of relevant information.

“Knowingly,” “Known,” or “Knows” denotes actual knowledge of the fact in question. A person’s knowledge may be inferred from circumstances.

“Plagiarism” means intentionally or knowingly representing the words or ideas of another as one’s own.

“Reasonable” or “Reasonably” when used in relation to conduct by a student denotes the conduct of a reasonably prudent and competent student.

“Reasonable belief” or “Reasonably believes” when used in reference to a student denotes that the student believes the matter in
question and that the circumstances are such that the belief is reasonable.

"Reasonably should know" when used in reference to a student denotes that a student of reasonable prudence and competence would ascertain the matter in question.

"Substantial" when used in reference to degree or extent denotes a material matter of clear and weighty importance.

**STUDENT-SCHOOL RELATIONSHIP**

**Rule 1.1 Competence**

(a) A law student shall strive to become a competent lawyer by acquiring legal knowledge, skills, and professionalism while in law school.

(b) Law students shall be responsible for learning the content of any course in which they are enrolled.

(c) Law students shall comply with all course requirements including attendance, preparation, discussion, and submission of written assignments.

*Comment*

A lawyer is faced with a wide variety of legal tasks. A lawyer is not expected to be competent in all areas of the law. The relative complexity and specialized nature of some matters may require the lawyer to have extensive training and years of experience.

Yet, some important legal skills, such as the analysis of precedent, the evaluation of evidence, and legal drafting, are required in all legal problems. Perhaps the most fundamental legal skill consists of determining what kind of legal problems a situation may involve, a skill that necessarily transcends any particular specialized knowledge.

Competent representation requires the legal knowledge, skill, thoroughness, and preparation reasonably necessary for the representation. A lawyer, after accepting the obligation of representation, must take the necessary steps to fulfill the responsibility. In a similar manner, law students, having accepted membership in the legal profession, must meet all of the responsibilities associated with that membership.

The starting point for the law student is in the educational pro-
gram, where a student obtains the knowledge, skills, and professionalism necessary to become a competent lawyer. A student should learn the substantive content of any course in which he or she is enrolled. Much of the knowledge acquired by a student in a classroom is learned through an active and informed exchange of ideas between faculty and students, and between students and students. As such, attendance, preparation, and discussion are all integral parts of a process in which students both learn and help others to learn.

**Rule 1.2 Scope of Responsibilities to the Law School**

(a) A student shall not knowingly disregard any of the rules and regulations established by the law school.

(b) A student or student organization may not use the law school name without express authorization except to identify the law school affiliation of the individual, group, or organization.

(c) A student's enrollment in a course does not constitute an endorsement of the faculty member's political, economic, social, or moral views or activities.

(d) A student participating in a client clinic assumes the responsibility to act in accordance with the applicable code of professional responsibility and local rules and regulations and to allocate sufficient time to satisfy the responsibility of a student-lawyer in the course.79

**Comment**

Just as lawyers must comply with the rules and regulations of the courts, governments, corporations, and law firms that they are working with, law students must comply with the rules and regulations of their law schools. This does not mean that lawyers and students cannot disagree with the rules and regulations or take the legal steps to seek changes.

In the same manner that a lawyer's representation of a client does not constitute approval of the client's views or activities, a

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student's enrollment in a course does not constitute an endorsement of the faculty member's views or activities.

A student participating in a client clinic has a duty to meet the course requirements and to serve the interests of the client. This latter duty requires that the student adhere to the applicable code of professional responsibility for lawyers in the jurisdiction. A violation of any applicable rules in the jurisdiction is also a violation of the Model Rules of Conduct for Law Students under this Rule and under Rules 1.7 and 1.8.

**Rule 1.3 Diligence**

A student shall act with reasonable diligence and promptness in all educational matters.

**Comment**

A student should pursue educational matters despite personal inconvenience. A student should control his or her workload so that each matter can be handled adequately.

Perhaps no professional shortcoming is more widely resented than procrastination. A student should be prompt and should carry through to conclusion all matters undertaken.

**Rule 1.4 Candor and Honesty**

A law student shall not knowingly:

(a) make a false statement of material fact or law in a class discussion, oral argument, written research assignment, or in any other academic exercise;

(b) plagiarize or fabricate on any written assignment or examination;

(c) violate instructions on written assignment or examination;

(d) cheat in any exercise;

(e) forge or use any law school document in an unauthorized manner; or

(f) steal any of the property or services of the law school or of others.
Comment

Fair competition in an educational setting requires fairness from each student. Moreover, confidence in the legal profession can be obtained only by having members who maintain the highest ethical standards and who are fair, candid, and honest in all of their dealings.

Cheating on an examination can take a wide variety of forms including the following: 1) discussing the examination during the examination with anyone except the instructor or the instructor's substitute unless specifically permitted to do so by the written examination instructions; 2) giving, receiving, or soliciting aid during any examination, take-home examination, or make-up examination before or after the regularly scheduled examination has been administered; 3) using any materials in any examination except those which are specifically permitted by the written examination instructions; 4) exchanging materials with another student during the examination unless specifically permitted to do so by the written examination instructions; and 5) continuing to write any examination answer when the examination time has expired.

Rule 1.5 Impartiality and Decorum

A student shall not:

(a) seek to influence a judge, lawyer, faculty member, or other official by means prohibited by law or law school policy; or

(b) engage in conduct intended to disrupt a classroom.

Comment

Many forms of improper influence upon a tribunal are proscribed by criminal law. Others are specified in the ABA Model Code of Judicial Conduct, with which a law student should be familiar. A law student is required to avoid contributing to a violation of such provision. In addition, a law student should not attempt to improperly influence a faculty member or school official regarding any educational matter.

A student should not disrupt the educational process by interfering with other students’ right to learn and should refrain from abusive or obstreperous conduct. A student may stand firm against abuse by a faculty member or another law student but should
avoid reciprocation; the inappropriate conduct by others is no justification for similar dereliction.

**Rule 1.6 Fairness to Other Students**

A law student shall not:

(a) obstruct another student's access to legal knowledge by removing, altering, destroying, or concealing any library material, nor counsel or assist another person to do so; or

(b) engage in any other conduct intended to interfere with another student's right to learn.

*Comment*

Fair competition requires fairness from each student toward each student. Each student is entitled to equal access to all the resources of the educational institution, including library, placement, registration, and other services provided by the law school.

**Rule 1.7 Unauthorized Practice of Law**

A law student shall not:

(a) practice law unless expressly permitted to do so within the regulation of the applicable jurisdiction; or

(b) assist a person who is not a member of the bar in the performance of activity that constitutes the unauthorized practice of law.

*Comment*

The definition of practice of law is established by law and varies from one jurisdiction to another. Whatever the definition, limiting the practice of law to members of the bar protects the public against rendition of legal services by unqualified persons. Nevertheless, many jurisdictions have special rules permitting law students to engage in limited practice while in an educational program and under the supervision of a member of the bar. In such situations, law students may engage in limited practice provided
they do so within the jurisdictional rules including any code of professional conduct for lawyers.

**Rule 1.8 Responsibility of a Student Working As a Subordinate**

(a) A student is bound by the rules of professional conduct notwithstanding that the student acted at the direction of another person.

(b) A student working under the direction of another does not violate the rules of professional conduct if that student acts in accordance with the supervisor's reasonable resolution of an arguable question of professional duty.

**Comment**

Although a student is not relieved of responsibility for a violation by the fact that the student acted at the direction of a supervisor, that fact may be relevant in determining whether a student had the knowledge required to render conduct a violation of the Rules.

When a law student in a supervisor-subordinate relationship with a lawyer encounters a matter involving professional judgment as to ethical duty, the supervisor may assume responsibility for making the judgment. Otherwise a consistent course of action or position could not be taken. If the question can reasonably be answered only one way, the duty of both is clear and they are equally responsible for fulfilling it. However, if the question is reasonably arguable, someone has to decide upon the course of action. That authority ordinarily reposes in the supervisor, and a subordinate may be guided accordingly.

**Maintaining the Integrity of the Profession**

**Rule 2.1 Bar Admission, Seeking Employment, and Disciplinary Matters**

(a) A law student who is applying for admission to the bar, or who is in the process of seeking employment or professional advancement, or who is participating in a disciplinary matter in any capacity, shall not

(1) knowingly make a false statement of material fact; or
(2) fail to disclose a fact necessary to correct a misapprehension known to the student to have arisen in the matter.

(b) A law student shall not knowingly fail to respond to a lawful demand for information from a bar admissions or school disciplinary authority.

Comment

The duty imposed by this Rule extends to students seeking admission to the bar as well as to other students. Hence, the duty imposed by this Rule applies to a student's own admission or discipline as well as that of others. Thus, it is a separate professional offense for a student to knowingly make a misapprehension or omission in connection with a disciplinary investigation of the student's own conduct. This Rule also requires affirmative clarification of any misunderstanding on the part of the bar admission or school disciplinary authority of which the person involved becomes aware.

This Rule is subject to the provisions of the fifth amendment of the United States Constitution and corresponding provisions of state constitutions. A person relying on such a provision in response to a question, however, should do so openly and not claim the right of nondisclosure as a justification for failure to comply with the Rule.

RULE 2.2 REPORTING PROFESSIONAL MISCONDUCT

(a) A student having knowledge that another student has committed a violation of the rules of professional conduct that raises a substantial question as to that student's honesty, trustworthiness, or fitness as a member of the legal profession shall inform the appropriate professional authority.

(b) A student having knowledge that a judge, lawyer, or faculty member has committed a violation of applicable rules of conduct that raises a substantial question as to that person's fitness for the position shall inform the appropriate authority.

Comment

Self-regulation of the legal profession requires that members of the profession initiate disciplinary investigations when they know
of a violation of the rules of professional conduct. An apparently
isolated violation may indicate a pattern of misconduct that only a
disciplinary investigation can uncover.

A student is not obliged to report every violation of the Rules. This Rule limits the reporting obligations to those offenses that a
self-regulating profession must vigorously endeavor to prevent. A
measure of judgment, therefore, is required in complying with the
provisions of this Rule. The term “substantial” refers to the seri-
ousness of the possible offense and not the quantum of evidence of
which the student is aware.

**Rule 2.3 Misconduct**

It is professional misconduct for a student to

(a) violate or attempt to violate the rules of professional con-
duct, knowingly assist or induce another to do so, or do so
through the acts of another;

(b) commit a criminal act that reflects adversely on the stu-
dent’s honesty, trustworthiness, or fitness to become a lawyer in
other respects;

(c) engage in conduct involving dishonesty, fraud, deceit, or
misrepresentation;

(d) engage in conduct that is prejudicial to the administration of
justice;

(e) state or imply an ability to influence improperly a govern-
ment agency of official, or a law school official; or

(f) knowingly assist a judge or judicial officer, lawyer, or faculty
member in conduct that is in violation of the applicable rules of
conduct or other law.

**Comment**

Many kinds of illegal conduct reflect adversely on fitness to be a
member of the legal profession, such as offenses involving fraud
and the offense of willful failure to file an income tax return. How-
ever, some kinds of offense carry no such implication. Traditionally,
the distinction was drawn in terms of “moral turpitude.” That
concept can be construed to include offenses concerning some mat-
ters of personal morality, such as adultery and comparable offenses, that have no specific connection with fitness to be a member of the legal profession. Although a student is personally answerable to the entire criminal law, a student should be professionally answerable only for offenses that indicate lack of those characteristics relevant to the practice of law. Offenses involving violence, dishonesty, breach of trust, or serious interference with the administration of justice are in this category. A pattern of repeated offenses, even ones of minor significance when considered separately, can indicate indifference to legal obligation.

APPENDIX

Law School Survey

In November 1983, a questionnaire was sent to all law school deans and student bar association presidents in order to gather some basic information about how law schools govern the conduct of students. The questionnaire was designed to determine the types of systems in use along with the role and the responsibilities of students within the system.

Out of 176 law schools, 118 deans or their representatives responded (17% deans, 65% assistant or associate deans, and 11% faculty). Forty-one student officers responded. The difference in responses may limit an accurate comparison between the students and the administration or faculty. Nevertheless, the distribution patterns exhibited enough similarity to eliminate the need for a direct comparison of the student response with the administration’s response at a particular law school. In addition, because of the variety of systems in use by the schools, certain trends are difficult to ascertain. Finally, not all respondents completed every question; consequently, some of the percentages did not total 100%. The responses to pertinent questions were as follows:

80. All information was processed through the SPSS Batch System on a Digital VAX.
4. How would you describe your statement of conduct?

<table>
<thead>
<tr>
<th></th>
<th>Law School Representatives</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Student</td>
</tr>
<tr>
<td>2.4%</td>
<td>15.7%</td>
</tr>
<tr>
<td></td>
<td>a. Code of Conduct (administered and enforced by faculty and administration).</td>
</tr>
<tr>
<td>21.9%</td>
<td>36.1%</td>
</tr>
<tr>
<td></td>
<td>b. Code of Conduct (as above, but with some student involvement in the administration and enforcement).</td>
</tr>
<tr>
<td>14.6%</td>
<td>12.9%</td>
</tr>
<tr>
<td></td>
<td>c. Honor Code (administered and enforced entirely by students).</td>
</tr>
<tr>
<td>51.2%</td>
<td>33.0%</td>
</tr>
<tr>
<td></td>
<td>d. Honor Code (as above, but with some faculty and administration involvement).</td>
</tr>
<tr>
<td>2.4%</td>
<td>1.8%</td>
</tr>
<tr>
<td></td>
<td>e. Other (describe).</td>
</tr>
</tbody>
</table>

5. Is the code limited to the law school?

<table>
<thead>
<tr>
<th></th>
<th>used university-wide</th>
</tr>
</thead>
<tbody>
<tr>
<td>87.8%</td>
<td>80.0%</td>
</tr>
<tr>
<td>9.7%</td>
<td>18.0%</td>
</tr>
</tbody>
</table>

9. Briefly describe how one reports an alleged violation of the code:

<table>
<thead>
<tr>
<th></th>
<th>to Dean</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>to Asst. Dean</td>
</tr>
<tr>
<td>17.0%</td>
<td>18.5%</td>
</tr>
<tr>
<td>2.4%</td>
<td>11.1%</td>
</tr>
<tr>
<td>2.4%</td>
<td>to student/faculty</td>
</tr>
<tr>
<td></td>
<td>investigatory committee</td>
</tr>
<tr>
<td>14.6%</td>
<td>10.8%</td>
</tr>
<tr>
<td>2.4%</td>
<td>to dean and/or faculty</td>
</tr>
<tr>
<td></td>
<td>to dean or faculty or asst. dean</td>
</tr>
<tr>
<td>17.0%</td>
<td>3.7%</td>
</tr>
<tr>
<td>46.0%</td>
<td>Other</td>
</tr>
</tbody>
</table>

10. Are students required to report any alleged violation that they discover?

<table>
<thead>
<tr>
<th></th>
<th>yes</th>
</tr>
</thead>
<tbody>
<tr>
<td>63.4%</td>
<td>52.7%</td>
</tr>
<tr>
<td>36.5%</td>
<td>46.2%</td>
</tr>
</tbody>
</table>
13. In your opinion, do most violations get reported?

<table>
<thead>
<tr>
<th>Student</th>
<th>Law School Representatives</th>
</tr>
</thead>
<tbody>
<tr>
<td>73.0%</td>
<td>49.0%</td>
</tr>
<tr>
<td>21.9%</td>
<td>30.5%</td>
</tr>
<tr>
<td></td>
<td>19.4%</td>
</tr>
</tbody>
</table>

14. In your opinion, is the system satisfactory?

<table>
<thead>
<tr>
<th>Student</th>
<th>Law School Representatives</th>
</tr>
</thead>
<tbody>
<tr>
<td>58.5%</td>
<td>61.0%</td>
</tr>
<tr>
<td>36.5%</td>
<td>37.0%</td>
</tr>
</tbody>
</table>

18. On each of the following questions please indicate your agreement/disagreement by assigning one of the values:

a. Students should be involved in administering and enforcing a code.

<table>
<thead>
<tr>
<th>Student</th>
<th>Law School Representatives</th>
</tr>
</thead>
<tbody>
<tr>
<td>85.0%</td>
<td>61.0%</td>
</tr>
<tr>
<td>12.2%</td>
<td>28.7%</td>
</tr>
<tr>
<td></td>
<td>4.6%</td>
</tr>
<tr>
<td>2.4%</td>
<td>3.7%</td>
</tr>
</tbody>
</table>

b. Students who are involved in the code process performed their roles in a responsible manner.

<table>
<thead>
<tr>
<th>Student</th>
<th>Law School Representatives</th>
</tr>
</thead>
<tbody>
<tr>
<td>56.7%</td>
<td>50.0%</td>
</tr>
<tr>
<td>36.5%</td>
<td>36.1%</td>
</tr>
<tr>
<td>7.3%</td>
<td>9.2%</td>
</tr>
<tr>
<td></td>
<td>1.8%</td>
</tr>
</tbody>
</table>

c. If student involvement in the process increased, their sense of professional obligation and responsibility would increase during law school.

<table>
<thead>
<tr>
<th>Student</th>
<th>Law School Representatives</th>
</tr>
</thead>
<tbody>
<tr>
<td>31.7%</td>
<td>31.4%</td>
</tr>
<tr>
<td>41.4%</td>
<td>36.1%</td>
</tr>
<tr>
<td>17.0%</td>
<td>21.2%</td>
</tr>
<tr>
<td>9.7%</td>
<td>10.9%</td>
</tr>
<tr>
<td></td>
<td>1.8%</td>
</tr>
<tr>
<td></td>
<td>7.4%</td>
</tr>
</tbody>
</table>
d. If they were involved in the enforcement of a code while in law school, lawyers would be more concerned about maintaining the integrity of the profession and the competence of its members.

<table>
<thead>
<tr>
<th>%</th>
<th>%</th>
<th>Response</th>
</tr>
</thead>
<tbody>
<tr>
<td>29.2</td>
<td>18.5</td>
<td>strongly agree</td>
</tr>
<tr>
<td>29.2</td>
<td>31.4</td>
<td>agree</td>
</tr>
<tr>
<td>26.8</td>
<td>29.6</td>
<td>undecided</td>
</tr>
<tr>
<td>7.3</td>
<td>9.2</td>
<td>disagree</td>
</tr>
<tr>
<td>7.3</td>
<td>.9</td>
<td>strongly disagree</td>
</tr>
<tr>
<td></td>
<td>9.2</td>
<td>no answer</td>
</tr>
</tbody>
</table>

e. A student code should prohibit conduct that would be a violation if committed by a lawyer and proscribed by the Code of Professional Responsibility or the Model Rules of Professional Conduct.

<table>
<thead>
<tr>
<th>%</th>
<th>%</th>
<th>Response</th>
</tr>
</thead>
<tbody>
<tr>
<td>39.0</td>
<td>40.7</td>
<td>strongly agree</td>
</tr>
<tr>
<td>26.8</td>
<td>35.1</td>
<td>agree</td>
</tr>
<tr>
<td>19.5</td>
<td>13.8</td>
<td>undecided</td>
</tr>
<tr>
<td>7.3</td>
<td>4.6</td>
<td>disagree</td>
</tr>
<tr>
<td>4.8</td>
<td>4.6</td>
<td>strongly disagree</td>
</tr>
<tr>
<td>2.9</td>
<td>.9</td>
<td>no answer</td>
</tr>
</tbody>
</table>

f. A student should have a duty to report all suspected violations of a code.

<table>
<thead>
<tr>
<th>%</th>
<th>%</th>
<th>Response</th>
</tr>
</thead>
<tbody>
<tr>
<td>41.4</td>
<td>41.6</td>
<td>strongly agree</td>
</tr>
<tr>
<td>21.9</td>
<td>27.7</td>
<td>agree</td>
</tr>
<tr>
<td>14.6</td>
<td>14.8</td>
<td>undecided</td>
</tr>
<tr>
<td>14.6</td>
<td>9.2</td>
<td>disagree</td>
</tr>
<tr>
<td>7.3</td>
<td></td>
<td>strongly disagree</td>
</tr>
<tr>
<td></td>
<td>3.7</td>
<td>no answer</td>
</tr>
</tbody>
</table>
The ABA and the law schools should develop Model Rules for Law School conduct that could be adopted voluntarily by each school.

<table>
<thead>
<tr>
<th>Percentage</th>
<th>Student Opinion</th>
</tr>
</thead>
<tbody>
<tr>
<td>29.2%</td>
<td>strongly agree</td>
</tr>
<tr>
<td>29.2%</td>
<td>agree</td>
</tr>
<tr>
<td>14.6%</td>
<td>undecided</td>
</tr>
<tr>
<td>17.0%</td>
<td>disagree</td>
</tr>
<tr>
<td>7.3%</td>
<td>strongly disagree</td>
</tr>
<tr>
<td>4.6%</td>
<td>no answer</td>
</tr>
</tbody>
</table>

CONCLUSIONS TO QUESTIONNAIRE

The questionnaire was designed as a vehicle for gathering preliminary data about honor codes and their impact on students. Clearly, much additional data would be needed to analyze the area more comprehensively. Nevertheless, the survey did meet its objective, and several conclusions can be drawn from this information. First, both students and law school representatives agree that students should be involved in administering and enforcing a code. This finding confirmed earlier studies involving undergraduate students. In addition, students who are involved in the code process perform their roles in a responsible manner.

There was less certainty about the impact that involvement in the code process had on the development of a student's sense of professional responsibility. The majority of the respondents agreed that this involvement would have an impact, yet a large number remained undecided—an expected response because of the difficulty in measuring any change.

Finally, both students and law school representatives expressed a high degree of dissatisfaction with their present systems. Fourteen schools currently are in the process of revising their codes. Several schools noted that the weakness in their system centered around cumbersome administrative procedures. Other schools noted that the students and faculty have little interest in the sys-

tem, which causes others to view the system as something not to be taken seriously. At the same time, however, the law school representatives favored a code that held students to the same standards as lawyers in terms of conduct prohibited by the Model Code of Professional Responsibility or the Model Rules.