

Commission on Evaluation of Professional Standards Chair's Introduction

The Commission on Evaluation of Professional Standards was appointed in the summer of 1977 by former ABA President William B. Spann, Jr. Chaired by Robert J. Kutak until his death in early 1983, the Commission was charged with evaluating whether existing standards of professional conduct provided comprehensive and consistent guidance for resolving the increasingly complex ethical problems in the practice of law. For the most part, the Commission looked to the former ABA Model Code of Professional Responsibility, which served as a model for the majority of state ethics codes. The Commission also referred to opinions of the ABA Standing Committee on Ethics and Professional Responsibility, as well as to decisions of the United States Supreme Court and of state supreme courts. After thoughtful study, the Commission concluded that piecemeal amendment of the Model Code would not sufficiently clarify the profession's ethical responsibilities in light of changed conditions. The Commission therefore commenced a drafting process that produced numerous drafts, elicited voluminous comment, and launched an unprecedented debate on the ethics of the legal profession.

On January 30, 1980, the Commission presented its initial suggestions to the bar in the form of a Discussion Draft of the proposed Model Rules of Professional Conduct. The Discussion Draft was subject to the widest possible dissemination and interested parties were urged to offer comments and suggestions. Public hearings were held around the country to provide forums for expression of views on the draft.

In the year following the last of these public hearings, the Commission conducted a painstaking analysis of the submitted comments and attempted to integrate into the draft those which seemed consistent with its underlying philosophy. The product of this analysis and integration was presented on May 31, 1981 as the proposed Final Draft of the Model Rules of Professional Conduct. This proposed Final Draft was submitted in two formats. The first format, consisting of blackletter Rules and accompanying Comments in the so-called restatement format, was submitted with the Commission's recommendation that it be adopted. The alternative format was patterned after the Model Code and consisted of Canons, Ethical Considerations, and Disciplinary Rules. In February, 1982, the House of Delegates by substantial majority approved the restatement format of the Model Rules.

The proposed Final Draft was submitted to the House of Delegates for debate and approval at the 1982 Annual Meeting of the Association in San Francisco. Many organizations and interested parties offered their comments in the form of proposed amendments to the Final Draft. In the time allotted on its agenda, however, the House debated only proposed amendments to Rule 1.5. Consideration of the remainder of the document was deferred until the 1983 Midyear Meeting in New Orleans. The proposed Final Draft, as amended by the House in San Francisco, was reprinted in the November 1982 issue of the *ABA Journal*.

At the 1983 Midyear Meeting the House resumed consideration of the Final Draft. After two days of often vigorous debate, the House completed its review of the proposed amendments to the blackletter Rules. Many amendments, particularly in the area of confidentiality, were

adopted. Debate on a Preamble, Scope, Terminology and Comments, rewritten to reflect the New Orleans amendments, was deferred until the 1983 Annual Meeting in Atlanta, Georgia.

On March 11, 1983, the text of the blackletter rules as approved by the House in February, together with the proposed Preamble, Scope, Terminology and Comments, was circulated to members of the House, Section and Committee chairmen, and all other interested parties. The text of the Rules reflected the joint efforts of the Commission and the House Drafting Committee to incorporate the changes approved by the House and to ensure stylistic continuity and uniformity. Recipients of the draft were again urged to submit comments in the form of proposed amendments. The House Committees on Drafting and Rules and Calendar met on May 23, 1983 to consider all of the proposed amendments that had been submitted in response to this draft. In addition, discussions were held among concerned parties in an effort to reach accommodation of the various positions. On July 11, 1983, the final version of the Model Rules was again circulated.

The House of Delegates commenced debate on the proposed Preamble, Scope, Terminology and Comments on August 2, 1983. After four hours of debate, the House completed its consideration of all the proposed amendments and, upon motion of the Commission, the House voted to adopt the Model Rules of Professional Conduct, together with the ancillary material as amended. The task of the Commission had ended and it was discharged with thanks.

Throughout the drafting process, active participants included not only the members of the Commission but also the Sections and Committees of the American Bar Association and national, state and local bar organizations. The work of the Commission was subject to virtually continuous scrutiny by academicians, practicing lawyers, members of the press, and the judiciary. Consequently, every provision of the Model Rules reflects the thoughtful consideration and hard work of many dedicated professionals. Because of their input, the Model Rules are truly national in derivation. The Association can take immense pride in its continued demonstration of leadership in the area of professional responsibility.

The Model Rules of Professional Conduct are intended to serve as a national framework for implementation of standards of professional conduct. Although the Commission endeavored to harmonize and accommodate the views of all the participants, no set of national standards that speaks to such a diverse constituency as the legal profession can resolve each issue to the complete satisfaction of every affected party. Undoubtedly there will be those who take issue with one or another of the Rules' provisions. Indeed, such dissent from individual provisions is expected. And the Model Rules, like all model legislation, will be subject to modification at the level of local implementation. Viewed as a whole, however, the Model Rules represent a responsible approach to the ethical practice of law and are consistent with professional obligations imposed by other law, such as constitutional, corporate, tort, fiduciary and agency law.

I should not end this report without speaking of the Commission's debt to many people who have aided us in our deliberations, and have devoted time, energy and goodwill to the advancement of our work over the last six years. It would probably be impossible to name each of the particular persons whose help was significant to us, and it surely would be unfortunate if the name of anyone were omitted from the list. We are, and shall remain, deeply grateful to the literally hundreds of people who aided us with welcome and productive suggestions. We think the bar should be grateful to each of them, and to our deceased members, Alan Barth of the District of Columbia, who we hardly had time to know; Bill Spann, who became a member after the conclusion of his presidential term; and our original chairman, Bob Kutak.

The long work of the Commission and its resulting new codification of the ethical rules of practice demonstrate, it is submitted, the commitment of the American lawyer to his or her profession and to its achievement of the highest standards.

Robert W. Meserve
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