

On-Line Resources For Analyzing Professional Responsibility & Ethics Issues in Criminal Defense Practice¹

By Evan A. Jenness

LAW OFFICES OF EVAN A. JENNESS

MAIN STREET LAW BUILDING

2115 MAIN STREET

SANTA MONICA, CALIFORNIA 90405

TEL. (310) 399-3259 FAX (310) 392-9029

www.jennesslaw.com

¹ In researching ethics issues, remember that laws, codes and rules are frequently amended, urls change often, and cases and ethics opinions may be superseded by subsequent authority. Verify the current status of any authorities on which you may rely!

Analyzing an Ethics Issue

Issue?

Is there a Constitutional provision, statute and/or rule of professional conduct that applies?

Any relevant case law in the jurisdiction?

Any relevant local rules?

Any opinions of local or regional ethics committees?

What do treatises & national ethics authorities have to say about the issue?

What strategy will best resolve the issue consistent with counsel's legal and ethical obligations and duties to the client, tribunal, other counsel and third parties?

FEDERAL AUTHORITIES

U.S. CONSTITUTION

U.S. Const., Amen. V (due process), VI (right to assistance of counsel), XIV -
<http://www.law.cornell.edu/constitution/constitution.billofrights.html#amendmentvi>

FEDERAL STATUTES

U.S. Code, Title 18 -
<http://www.gpoaccess.gov/uscode/browse.html>

See, e.g., Sections:

2 (principals, aiding & abetting)

3 (accessory after the fact)

4 (misprision of felony)

201 (bribery of witnesses)

371 (conspiracy)

401-03 (contempt of court)

798 (& 50 U.S.C. § 783) (disclosure of classified information)

1001 (fraud, false statements)

1341 (mail fraud)

1343 (wire fraud)

1510 (obstruction of justice)

1621-23 (perjury, subornation, false declarations)

1956-57 (money laundering)

2071 (tampering with public records)

FEDERAL CASE LAW

The federal libraries of [Westlaw](#) and [Lexis](#) contain case law adjudicating ethics issues from the U.S. Supreme Court, Circuit Courts of Appeals and U.S. District Courts.

FEDERAL RULES & REGULATIONS

Federal Rules of Appellate Procedure (2014) -

<http://www.uscourts.gov/uscourts/rules/appellate-procedure.pdf>

See, e.g., Rule 46 (attorney admission, suspension, disbarment)

Federal Rules of Civil Procedure (2014) -

<http://www.uscourts.gov/uscourts/rules/civil-procedure.pdf>

See e.g., Rules:

4.1(b) (service, enforcement of civil contempt orders)

11 (representations to court; sanctions)

16(f) (pretrial conference violation; sanctions)

26(b)(3) (attorney work-product)

37(b) (discovery violations; sanctions)

45(g) (subpoena violation; contempt)

56(h) (summary judgment, bad faith affidavit; contempt)

Federal Rules of Criminal Procedure (2014) -

<http://www.uscourts.gov/uscourts/rules/criminal-procedure.pdf>

See, e.g., Rules:

42 (contempt)

44 (appointment of counsel)

Federal Rules of Evidence (2014) -

<http://www.uscourts.gov/uscourts/rules/rules-evidence.pdf>

See, e.g., Rules 501, 502 (attorney-client privilege & work product)

28 U.S.C. § 530B - Ethical standards for attorneys for the Government (government lawyers subject to state laws and rules and local Federal court rules, governing attorneys in state where government lawyer practices, to same extent as other attorneys in the State) - <https://www.law.cornell.edu/uscode/text/28/530B>

28 C.F.R. 1, Pt. 77 (Ethical Standards for Attorneys for the Government) -

<http://www.gpo.gov/fdsys/pkg/CFR-2010-title28-vol2/xml/CFR-2010-title28-vol2-part77.xml>

RULES OF FEDERAL COURTS

Local Rules of the U.S. Supreme Court, Courts of Appeals, District Courts

See, e.g.,

Ninth Circuit Court of Appeals, Circuit Rule 46-2 (suspension, disbarment or discipline) - <http://www.ca9.uscourts.gov/rules/>

Central District of California, Local Civil Rule 83-3.1.2 (standards of professional conduct are those required of members of State Bar of California, and ABA Model Rules "may be considered as guidance") - <http://www.cacd.uscourts.gov/sites/default/files/documents/LRs-Effective-2014-December%201-Chapter%201.pdf>

CALIFORNIA AUTHORITIES

State Bar of California Website (www.calbar.ca.gov)

Home > Ethics

Ethics Information: The Ethics Information area of the State Bar website serves as a hub for ethics-related resources for California lawyers. These resources include, *among others*:

- California Rules of Professional Conduct
- The State Bar Act - Business & Professions Code §§ 6000 *et seq.*
- California Compendium on Professional Responsibility Index (2014) (entries through 12/31/13)
- MCLE Information, Rules & Regulations
- Constitution of California (relevant provisions)
- California Rules of Court
- Rules of Practice & Procedure of the State Bar Court
- Statutes Regarding Professional Conduct, Discipline of Attorneys
- Pro Bono* Resolution Adopted by the Board of Governors
- California Attorney Guidelines of Civility and Professionalism

See: <http://ethics.calbar.ca.gov/>

Home > Ethics > California Rules of Professional Conduct

The Current California Rules of Professional Conduct (2013):

The California Rules of Professional Conduct regulate the professional conduct of members of the State Bar of California through discipline. They have been adopted by the State Bar Board of Governors and approved by the California Supreme Court, and are intended to protect the public and to promote respect and confidence in the legal profession.

Available at:

http://rules.calbar.ca.gov/Portals/10/documents/2013_CaliforniaRulesofProfessionalConduct.pdf

Home > Committees > Rules Commission 2014

California authorities are engaged in a lengthy and ongoing process of revising the California Rules of Professional Conduct. Information about the background and status of this endeavor is available at:

<http://ethics.calbar.ca.gov/Committees/RulesCommission2014.aspx>

Potential Source of Guidance:

California State Bar Ethics Hotline: (800) 238-4427

NATIONWIDE ETHICS RESOURCES

PATHFINDERS

ABA Center for Professional Responsibility -
<http://www.abanet.org/cpr/links.html#States> - state-by-state listing of links to professional responsibility codes, ethics opinions, judicial codes, hotlines and practice materials.

ABA Center for Professional Responsibility -
<http://www.abanet.org/cpr/professionalism/home.html> - comprehensive library of on-line ethics resources.

CASE LAW REGARDING ETHICS

[Westlaw](#) contains multi-state ethics case law in the METH-CS library; use XXETH-CS for an individual state, where XX is the state's postal abbreviation. [Lexis](#) contains ethics cases from all states; within a state's library, the ETHICS file contains cases; the ethics opinions and cases of many states and D.C. are combined in the ETHICS library.

TREATISES

ABA/BNA Lawyers' Manual on Professional Conduct - available on [Westlaw](#) and [Lexis](#)
Lexis - A practical guide to the analysis of ethical issues.

The Restatement of the Law, 3d - The Law Governing Lawyers - available on [Westlaw](#) and [Lexis](#) - Rules of ethics largely drawn from the ABA Model Rules and Model Code, including citations to court decisions, ABA ethics opinions, treatises, law review articles, and other authorities.

John Wesley Hall, *Professional Responsibility in Criminal Defense Practice* (2014) - Comprehensive guidance for criminal defense counsel to resolve ethics issues in practical ways, sold at:
<http://legalsolutions.thomsonreuters.com/law-products/Treatises/Professional-Responsibility-in-Criminal-Defense-Practice/p/100002538>

John M. Burkoff, *Criminal Defense Ethics: Law & Liability* (2014) - Comprehensive review of criminal defense law and ethics, sold at:

<http://legalsolutions.thomsonreuters.com/law-products/Lawyering-Skills/Criminal-Defense-Ethics-Law-and-Liability-2014-ed/p/100265828>

Joseph F. Lawless, *Prosecutorial Misconduct: Law, Procedure, Forms* (4th Ed.), sold at:

http://www.lexisnexis.com/store/catalog/booktemplate/productdetail.jsp;jsessionid=14953716C504D113E21894CE9324D934.psc1706_Instore_001?pageName=relatedProducts&catId=&prodId=6679#

Richard E. Flamm, *Lawyer Disqualification: Conflicts of Interest & Other Bases* (2003 & Supp. 2010), sold at: http://www.cce-mcle.com/bios/flamm_books.htm

NATIONAL CODES OF CONDUCT

ABA Model Rules of Professional Conduct (2013) -

http://www.americanbar.org/groups/professional_responsibility/publications/model_rules_of_professional_conduct/model_rules_of_professional_conduct_table_of_contents.html

ABA Criminal Justice Standards -

http://www.americanbar.org/groups/criminal_justice/standards.html

ABA guidance to policymakers and practitioners in the criminal justice arena.

See, e.g.,

Defense Function

Discovery

DNA Evidence

Electronic Surveillance of Private Communications

Fair Trial & Free Press

Prosecution Function

Prosecutorial Investigations

American College of Trial Lawyers - Codes of Pretrial & Trial Conduct (2009) -

http://www.actl.com/AM/Template.cfm?Section=All_Publications&Template=/CM/ContentDisplay.cfm&ContentID=4380

STATE ORGANIZATIONS' ETHICS OPINIONS

[Westlaw](#) contains ethics opinions from multiple states. The identifier is XXETH-EO, where XX is the state's postal abbreviation. [Lexis](#) contains ethics opinions from the *National Reporter on Legal Ethics and Professional Responsibility*.

NATIONAL, REGIONAL AND LOCAL ORGANIZATIONS

American Bar Association - <http://www.abanet.org/cpr/pubs/ethicopinions.html> - Formal Ethics Opinions of the ABA's Standing Committee on Ethics and Prof. Responsibility

American Bar Association - <http://www.abanet.org/cpr/links.html#States> - state-by-state listing of links to ethics opinions.

BLOGS & OTHER ETHICS SOURCES ON-LINE

LegalEthics.com - <http://www.legalethics.com> - Prof. David Hricik and Peter Krakaur focus on ethical issues associated with the use of technology.

Legal Ethics Forum - <http://legalethicsforum.typepad.com/blog/> - Profs. John Dzienkowski, John Steele & Brad Wendel, Eds. Blog & extensive links.

Legal Profession Blog - http://lawprofessors.typepad.com/legal_profession/ - Profs. S. Alan Childress, Michael S. Frisch, Jeffrey M. Lipshaw, Eds. & Prof. Nancy B. Rapoport, Contrib. Ed. Blog & extensive links.

sunEthics - <http://www.sunethics.com/> - Ethics links for Florida lawyers.

The Boundaries of Legal Ethics and Marketing - <http://www.willhornsby.com/> - Attorney Will Hornsby provides extensive resources on marketing and legal ethics.

JUDICIAL ETHICS ON-LINE

ABA Model Code of Judicial Conduct (2010) -

http://www.americanbar.org/groups/professional_responsibility/publications/model_code_of_judicial_conduct.html

U.S. Courts - Code of Conduct for United States Judges -

<http://www.uscourts.gov/RulesAndPolicies/CodesOfConduct/CodeConductUnitedStatesJudges.aspx>