

2006-1810: A COMPARATIVE STUDY OF PROFESSIONAL ETHICS: WHAT CAN THE ETHICS OF THE LEGAL PROFESSION TEACH ENGINEERS?

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A Comparative Study of Professional Ethics: What Can the Ethics of the Legal Profession Teach Engineers?

Abstract

Engineering faculty, technical managers, and practicing engineers want to see ethically-minded engineers exit the graduation stage and enter the work force. But how can faculty increase the chances of that occurring? Other professions that impose on practitioners a high level of professional responsibility might provide useful answers. Surprisingly, no better profession exists for this purpose than the legal profession. The endless parade of jokes about attorneys hides the fact that the legal profession possesses a refined ethics curriculum and accountability process.

This paper seeks to understand what the legal curriculum suggests to engineering educators about how and what to include in an ethics curriculum. The paper outlines the high level of development of ethics in law school curricula and the intense regulation of attorneys' professional conduct. Additionally, a comparison of legal versus engineering ethics curricula material shows the development of the ethical and professional canons for attorneys relative to those for engineers. Lastly, the paper offers suggestions to engineering faculty.

Introduction

The general public characterizes lawyers as “greedy, manipulative, and corrupt.”¹ Corporate scandals, media-circus court coverage, allegations that frivolous medical malpractice lawsuits undermine healthcare, and widely-publicized multi-million dollar tort damage awards work to create this perception.² Additionally, the adversary process employed in the legal system often works to ensure that at most half of the parties involved in any legal dispute are satisfied. One usually does not need to look hard or far to find a divorcé or divorcée who does not hold in high regard the ex-spouse's attorney.³

Perception, however, does not necessarily equate with reality. Very few legal disputes end up in court, politicians and business leaders in many cases exaggerate the societal and economic ills wrought by lawyers, and media reports prove less than representative of the ordinary practice of law. Digging into the matter a bit further, a great many lawyers engage in ethical conduct. For example, in 2004 - the last year for which statistics are available - roughly 6,000 lawyers nationwide received sanctions for some kind of ethical lapse.⁴ That same year approximately 1.1 million persons were engaged in the practice of law.⁵ Of the lawyers who were sanctioned, the ethical lapse involved typically related to a single case or transaction rather than to his or her entire practice of law and involved lack of communication with clients.

Stated another way, almost all practicing lawyers (99.5%) presumably engaged in ethical conduct. True, not all lawyers who engaged in unethical conduct were found out or reported to their respective bar associations, but the same could be said for other professions. Additionally, there is no evidence that underreporting is any more or less prevalent in the legal profession than in other professions. To encourage reporting, state and local bar associations make complaint forms easily and readily accessible to the general public.⁶

Whether engineers as a group are more ethical than attorneys remains an unanswered question. Similar nationwide statistics on engineers are not readily available, and any state-level statistics must be culled from reports of cases published by licensing boards. For example, a search of the Texas Board of Professional Engineers' website revealed that Texas has approximately 41,000 active, registered professional engineers.⁷ During 2004, roughly 40 individual engineers or engineering firms in Texas - 0.1 percent of the state's total registered engineers - received sanctions.⁸ This statistic, however, masks the fact that engineering, unlike law, does not require licensure to practice.⁹ For every four registered professional engineers in Texas there are seven unregistered ones.¹⁰ Unregistered engineers are presumably not only less likely to know or understand their ethical obligations as engineers, but are less likely to see them as obligations than are registered engineers.¹¹

The legal profession has developed over the years a wealth of doctrines, curricula, cases, and rules pertaining to attorneys' ethical conduct. Ethical conduct, however, is not necessarily moral conduct. Ethics involves principles of conduct that reflect a profession's choices among potentially conflicting moral or value considerations. Certain ethical conduct on the part of lawyers might strike some outside the profession as immoral. The same could be said of other professions' conduct, including engineering. A lawyer who does not disclose to the police where his or her guilty client has hid the body might prove as immoral to some as the engineer who faithfully designs a navigational system for a weapon of mass destruction. Therefore, the purpose of this paper is not to debate the morality of lawyers and engineers – a subjective exercise at best.

What this paper does focus on are the lessons that engineering educators might glean from legal educators regarding professional responsibility education and practice. Nothing that follows is intended to disparage the efforts to date of engineering educators. Engineering ethics as a subject dates back some 150 years.¹² Engineering education is blessed with fine, dedicated faculty. Faculty have provided the field with learning modules,¹³ an increasing number of ethics texts, and online resources such as those provided by The Online Ethics Center for Engineering and Science at Case Western Reserve University.¹⁴ Rather, our purpose is to spark thought in the hope that existing material can be improved upon and new material and approaches can be developed.

Organization of the Paper

The paper begins with a brief review of the attorney's code of ethical conduct, the American Bar Association's Model Rules of Professional Conduct. Second, other sources of authority and advice available to lawyers on ethical issues are described. Third, the ethics curriculum in legal education is discussed. Fourth, the Multistate Professional Responsibility Examination that most lawyers are required to successfully take is presented. Fifth, and last, suggestions for engineering educators are provided.

American Bar Association's Model Rules of Professional Conduct

Since the early 1800s, the legal profession has tried to describe professional behavior.¹⁵ The early efforts led to the American Bar Association (the "ABA Canons") publishing the Canon of Professional Ethics in 1908. The ABA Canons, however, were adopted by relatively few states

at the time. Instead, lawyers in most states were subject to discipline for violating a rather broad, nebulous standard - “conduct unbecoming a lawyer.”

The standard changed in 1968 when the ABA adopted its Model Code of Professional Responsibility (the “Code”). The Code provided specific principles that provided more guidance to lawyers. The principles also were more amenable to disciplinary enforcement. Although the Code by itself had no force of law, almost every state supreme court adopted the Code and made it law within that state.

Fifteen years after the Code was promulgated, the ABA adopted in 1983 the Model Rules of Professional Conduct. Those rules underwent an extensive revision in 2002. Today, most jurisdictions have adopted either the 1983 or 2002 versions of the Model Rules.¹⁶ Six states still make use of the Code.¹⁷ An increasing number of states are also adopting standards of civility to complement the Rules.¹⁸

The Model Rules contain over 50 specific rules pertaining to lawyer conduct.¹⁹ The rules are organized in eight sections as shown in Table 1. Within each section, each rule is written in what lawyers refer to as “Restatement” format – a statement of the rule or so-called “black letter law,” followed by an explanatory comments and notes section. For example, Model Rule 1.1, which is a fairly simple rule, addresses competence:

A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation.

This rule is then followed by an extensive six-part comment section, a portion of which appears below:

[3] In an emergency a lawyer may give advice or assistance in a matter in which the lawyer does not have the skill ordinarily required where referral to or consultation or association with another lawyer would be impractical. Even in an emergency, however, assistance should be limited to that reasonably necessary in the circumstances, for ill-considered action under emergency conditions can jeopardize the client's interest.

It is not unusual for the comment section to greatly exceed in length the statement of the rule itself. For example, Rule 1.1 requires less than three lines of text to state, but requires almost one full page of comments to explain its meaning.²⁰ Rule 1.7, which addresses conflict of interest with current clients, takes less than half-a-page to state and nine pages to explain.²¹ By adopting the statement of the rule, the court also adopts its explanatory comment. Therefore, the explanatory comment has authoritative status in that jurisdiction.

Additionally, a terminology section is provided as Rule 1.0. For example, the terms “knowingly, known, or knows” are defined as “actual knowledge of the fact in question. A person's knowledge may be inferred from circumstances.”²²

Two main differences exist between the ABA’s presentation of the Model Rules and the National Society of Professional Engineers (the “NSPE”) presentation of its Code of Ethics.²³ First, the ABA provides a terminology section whereas the NSPE does not. For example, the term

Table 1. Topics and Types of Specific Rules Contained in the Model Rules

§	Topic	Partial Listing of Types of Specific Rules
1	Client-Lawyer Relationship	Competence, Scope of Representation, Communication, Confidentiality, Conflict of Interest
2	Counselor	Advisor, Evaluation for Use by Third Persons, Serving as Third Party Neutral
3	Advocate	Meritorious Claims, Expediting Litigation, Candor Toward the Tribunal, Fairness to Opposing Counsel
4	Transactions with Persons Other Than Clients	Truthfulness in Statements to Others, Dealing with Unrepresented Persons
5	Law Firms and Associations	Responsibilities of Partners and Supervisory Lawyers, Professional Independence, Unauthorized Practice of Law
6	Public Service	Pro Bono Service, Membership in Legal Services Organization, Law Reform Activities
7	Information About Legal Services	Communication, Advertising, Direct Contact with Prospective Clients, Political Contributions
8	Maintaining the Integrity of the Profession.	Bar Admission and Disciplinary Matters, Reporting Professional Misconduct, Misconduct

“public” appears throughout the NSPE code, but it is never specifically defined. Public, in its ordinary usage, could mean all of the people or the whole area of a nation or state. Likewise, the term could mean local, community interests as opposed to private ones. Still yet, it could mean the general welfare.²⁴ Second, the NSPE does not provide official comments to each rule. In reading the Code, an engineer is left to his or her own interpretation. However, the NSPE does provide some limited, free access to cases useful to the engineer in interpreting various code provisions.²⁵ It also publishes opinions of the Board of Ethical Review that contain discussion sections which provide dictum that helps the reader interpret the rule.²⁶

With respect to the ethical codes themselves, significant overlap exists between the ABA’s Model Rules and the NSPE’s Code (Table 2). The major difference between the two codes lies in who is owed the duty of care and loyalty. In the lawyer’s case, the duty is owed to the client and the courts. In the engineer’s case, the duty is owed to the public and the employer.

Other Sources

In addition to the Model Rules, four other sources of authority and advice on ethical conduct are available to lawyers – court opinions, ethics opinions, Restatements, and federal regulations.²⁷ The first source of authority and advice, court opinions, are available in cases disciplining lawyers or alleging malpractice. The legal system possesses a well developed database of cases that makes it rather easy to find cases on specific legal points.

Beginning in the late 1800s, West (now Thompson West) started to publish case reporters.²⁸ The editors at West read cases and extract from them what the editors consider the relevant points of law. Each point of law is summarized and assigned a topic and key number. The summary, topic, and key number represent a headnote, and each headnote for a case is then referenced to a particular paragraph or section in the case.

Table 2. Comparison of the NSPE's Code and the ABA's Model Rules.²⁹

NSPE	ABA	NSPE	ABA	NSPE	ABA
I-1		II-4	2.1	III-4	1.6
I-2	1.1	II-4(a)	1.7, 1.8, 1.9, 1.10, 1.11	III-4(a)	1.7(b)
I-3	4.1 (a)	II-4(b)	1.5(c), 5.4 (c), 7.6	III-4(b)	1.7, 1.9
I-4	1.2(a)	II-4(c)	7.6, 3.5(a)	III-5	7.6
I-5	1.2 (d)	II-4(d)	6.3	III-5(a)	1.8, 7.6
I-6	Preamble 4, 5, 6, 8, 9	II-4(e)	7.6, 3.5(a)	III-5(b)	7.6
II-1		II-5		III-6	7.3, 8.2
II-1(a)	1.13(b)	II-5(a)	7.1, 7.2, 7.4 (d), 7.5 (d)	III-6(a)	1.5, 3.5 (a)
II-1(b)	3.3	II-5(b)	1.8(c), 3.5(a), 7.2(b)	III-6(b)	
II-1(c)	1.6	III-1		III-6(c)	
II-1(d)	1.16(b)	III-1(a)	2.1, 3.3(d), 4.1	III-7	3.8(f), 8.2(a), 8.3(a)
II-1(e)	1.2 (d), 5.1, 5.2, 5.5	III-1(b)	1.2(d), 2.1, 3.1	III-7(a)	2.3 (a)
II-1(f)	8.3, 8.4	III-1(c)	1.3, 3.6	III-7(b)	5.1(a) & (b)
II-2	1.1	III-1(d)	4.1	III-7(c)	
II-2(a)	1.1	III-1(e)	5.4	III-8	
II-2(b)	7.4 (d)	III-2	6.1	III-8(a)	
II-2(c)		III-2(a)	6.1	III-8(b)	
II-3	3.8(d), 3.3(a.1), 3.3 (a.3)	III-2(b)	1.13, 1.16, 3.3	III-9	
II-3(a)	2.1, 4.1 (a)	III-2(c)		III-9(a)	
II-3(b)	4.1 (a), 1.1	III-3		III-9(b)	1.6
II-3(c)	3.6, 7.6	III-3(a)	3.3, 3.4, 4.1, 7.1, 7.2	III-9(c)	
		III-3(b)	7.2	III-9(d)	1.6
		III-3(c)		III-9(e)	1.1

An example headnote, found in the case of *Cincinnati Bar Assn. v. Kathman*,³⁰ is shown below:

[4]
 45 Attorney and Client
 45I The Office of Attorney
 45I(A) Admission to Practice
 45k11 Practitioners Not Admitted or Not Licensed
 45k11(2) Acts Constituting Practice of Law in General
 45k11(3) k. Drafting or Preparation of Documents. Most Cited Cases

An attorney, licensed to practice law in the state of Ohio, aids in the unauthorized practice of law when he or she assists non-attorneys to market or sell living trusts. Code of Prof. Resp., DR 3-101(A).³¹

The headnotes are placed at the front of each case in a West Reporter. The headnote is also referenced in the text of the case itself. In the above example, a [4] will be found somewhere in the text of the case itself, indicating that the material which follows relates to this topic, key number, and point of law.

Headnotes are also found in the West Digest with an accompanying case citation. Using the digest, a lawyer can find cases that relate to a specific topic and key number, then locate the

relevant cases in a West Reporter. In the example above, the topic and key number 45k11(3)k would lead to other cases dealing with ethical issues associated assisting non-attorneys in drafting legal documents.

Alternatively, a lawyer may find a particular case on point in a reporter and then use one or more of the headnote topics and key numbers to find citations to other cases referenced by the digest. Each case referenced in the digest will contain the headnotes found in the reporter, allowing the lawyer a quick and easy way to decide whether or not to obtain a copy of that case from one of the reporters.

An engineer seeking guidance on an ethical issue faces a more difficult task than does a lawyer. Other than the occasional engineering malpractice case, few engineering ethics cases appear in the reporter system. Boards of professional engineers may report cases, but cases tend to be organized by the date of decision as opposed to the ethical rule involved.³² In many cases, the specific ethical rule that has been violated is not enumerated.³³ Additionally, no central database exists for accessing decisions of disparate boards relating to the same ethical issue. This state-of-affairs is unfortunate because interpretation is central to the effective use of an engineering code of ethics.³⁴

A second source of authority is ethics opinions issued by the ABA and state and local bar associations issues. For example, the Oklahoma Bar Association's (the "OBA") Legal Ethics Committee prepares advisory opinions for approval and issuance by the OBA's Board of Governors. These opinions provide a guide to responsible professional behavior and can have the effect of law if adopted by the state supreme court. The opinions, which are provided online and with a search mechanism, generally present an issue, an analysis and discussion of that issue, and the Model Rules that provide a basis for the opinion. An example issue is shown below.

May an attorney engaged by a client for counseling in estate planning and trust matters provide estate planning services to the client and (1) offer to sell to the client financial products, such as insurance or securities, which the attorney is licensed to sell; or (2) refer the client to a business in which the attorney owns an interest (or from which he or she receives compensation) for the purchase of such products?³⁵

In answering this particular question, Model Rules 1.7(b), Concurrent Conflict of Interest; 1.8(a), Business Transactions with Client; and 2.1 (Role of Attorney as Advisor) were considered. The opinion concludes:

“[i]f the lawyer complies with the applicable Rules of Professional Conduct and other laws (such as insurance or securities licensure, registration and disclosure requirements), a lawyer who provides legal services to a client in estate planning or trust matters may also provide non-legal, but ancillary, products or services to their law clients, either directly or through an affiliated entity.”³⁶

A third source of authority and advice is the Restatement (Third) of Law Governing Lawyers.³⁷ The Restatements of the Law are developed and published by the American Law Institute, a private organization comprised of some 2700 elected members from the legal community who

represent “professional promise fulfilled.”³⁸ The purpose of the Restatements is to help clarify and simplify the common law in various legal fields including professional responsibility.

A lengthy, peer-reviewed, drafting process is followed by the American Law Institute to decide which common law rules are to be included in a Restatement. The Restatement then sets out the common law rule in “statute-like” format, breaking each rule into its component parts. For example, Section 11 of this Restatement addresses a lawyer’s duty of supervision. It states in part “a lawyer who has direct supervisory authority over another lawyer is subject to professional discipline for failing to make reasonable efforts to ensure that the other lawyer conforms to applicable lawyer-code requirements.”

For each rule stated, the Restatement provides a commentary on the proper interpretation of the rule, illustrations that demonstrate how the rule should apply to certain fact patterns, and summaries of cases that applied and interpreted the Restatement. The appendix volumes that accompany each Restatement contain additional case citations and summaries. These volumes are updated by means of a “pocket part,” a small pamphlet issued periodically which contains cases decided after the Restatement’s publication.³⁹

The fourth, and last, source of authority and advice is federal regulations. For example, the Sarbanes-Oxley Act of 2002 contains a whistleblowing provision in it that directly pertains to corporate attorneys.⁴⁰ The essence of that provision also has been codified in Model Rule 1.13, Organization as Client.⁴¹

Legal Education in Ethics

Law schools require students to pass coursework in professional responsibility. The Council of the Section of Legal Education and Admissions to the Bar (the "Council") of the American Bar Association (the "ABA") is responsible for accreditation of law schools.⁴² The ABA requires that accredited law schools “shall require that each student receive substantial instruction in the substantive law generally regarded as necessary to effective and responsible participation in the legal profession.”⁴³

Accreditation is primarily standards based. Chapter 3 of the standards deals with the program of legal education. Standard 302, Curriculum, states in part that “a law school shall require that each student receive substantial instruction in . . . the history, goals, structure, values, rules, and responsibilities of the legal profession and its members.”⁴⁴ Therefore, all of the 190 law schools approved by the ABA provide instruction in professional responsibility.⁴⁵

One notable feature of the education of attorneys is the prevalence of materials. Surveying the available curricular materials from one legal publisher, the West Group which is a subsidiary of Thomson publishing, found no less than 11 titles of casebooks.⁴⁶ In general, these casebooks differ from those used to teach engineering ethics.

As an example of the difference between legal ethical education and engineering ethical education, a review of two texts, one in engineering ethics and the other in legal ethics, proves instructive. The legal ethics text, Morgan & Rotunda’s *Professional Responsibility: Problems and Materials* (8th Ed.) published by Foundation Press, is organized around the Model Rules. This text was the one used by both authors as students in their legal ethics class and appears

fairly typical of this type of text. With the exception of the first chapter, which is devoted to the development of the standards of professional conduct and contributions of moral philosophy to legal ethics, and the last chapter, which addresses the ethical conduct of judges, all the other chapters specifically address the rules. Roughly 90 percent of the text focuses on the rules (588 pages of 667 total pages of text). More importantly, cases involving conflicts among the various rules are found throughout the text.

By way of comparison, Martin and Schinzinger’s *Ethics in Engineering* (4th Ed.) published by McGraw Hill, is organized around such topics as workplace responsibilities, honesty, and environmental ethics. While each chapter addresses ethical issues found in the code, few references in the text are made to specific rules in the code. Of the 325 pages of text and appendix material, less than 10 percent (25 pages) is devoted to the actual rules found in the code. That material is limited to providing the various codes. Other engineering ethics textbooks are similar, like Fleddermann’s *Engineering Ethics* (2nd Ed.) published by Pearson Prentice Hall.

Some engineering ethics texts begin to approach the type of casebook found in legal ethics education. For example, Harris et al.’s *Engineering Ethics: Cases and Concepts* (3rd Ed.) published by Thompson Wadsworth, contains a taxonomy of cases that relate to such topics as acknowledging mistakes, competence, and conflicts of interest. This inclusion is not surprising given the publisher. Thompson also owns West which publishes law school casebooks. However, the topics are presented without reference to specific rules. Furthermore, there is a lack of cases involving conflicts among multiple rules.

Multistate Professional Responsibility Examination⁴⁷

Admission to the bar in almost all states is predicated on passing an ethics exam. The Multistate Professional Responsibility Examination (the “MPRE”) is a 50 question, two-hour, multiple choice examination that tests bar applicants’ knowledge and understanding of established standards related to a lawyer’s professional conduct. Nine topical areas are tested (Table 3). The 2002 version of the Model Rules forms the basis for the questions.⁴⁸

Table 3. Topics Tested on the MPRE and Percent of MPRE Devoted to Topic

Topic	Percent
Regulation of the Legal Profession	8 - 12
The Client-Lawyer Relationship	10 - 14
Privilege and Confidentiality - Clients and Former Clients	6 - 10
Independent Professional Judgment - Conflicts of Interest - Client Consent	12 - 16
Competence, Legal Malpractice, and Other Civil Liability	8 - 12
Litigation and Other Forms of Advocacy	12 - 16
Different Roles of the Lawyer	4 - 8
Safekeeping Property and Funds of Clients and Others	4 - 8
Communication About Legal Services	6 - 10
Lawyers and the Legal System	2 - 6
Judicial Ethics	6 - 10

The test is developed by a six-member Drafting Committee comprised of recognized experts in the area of professional responsibility and each test item or question undergoes a multi-stage review process. Each question begins with a fact pattern that presents a type of situation that a practicing attorney is likely to face. For example,

Lawyer represents Client in the defense of a personal injury action brought by Plaintiff. Client had given Plaintiff the use of Client's cabin in the woods. When Plaintiff arrived at the cabin, he suffered a serious injury when one of the wooden planks in the cabin's front porch gave way. Client was adamant that the porch was properly constructed and that Plaintiff must have concocted the story about the board in order to hide Plaintiff's own carelessness. Plaintiff's attorney contacted an expert engineer to examine the porch. Two days before the engineer was scheduled to arrive, Lawyer sent Investigator, an employee of Lawyer, to examine the porch. Investigator reported to Lawyer that the porch was constructed of substandard material and a board had obviously come loose. The next day, before engineer's appointment, a brushfire destroyed thousands of acres of forest, including the Client's cabin. A careless camper had caused the fire. Lawyer never advised Plaintiff's attorney of Investigator's findings and a verdict was entered for the defense at trial.⁴⁹

The fact pattern is then followed by five possible answer choices that relate directly to the Model Rules and include some or all of the following key words or phrases:

1. Subject to discipline asks whether the conduct described in the question would subject the lawyer to discipline under the provisions of the ABA Model Rules of Professional Conduct. In the case of a judge, the test questions also asks whether the judge would be subject to discipline under the ABA Model Code of Judicial Conduct.
2. May or proper asks whether the conduct referred to or described in the question is professionally appropriate in that it:
 - a. would not subject the lawyer or judge to discipline; and
 - b. is not inconsistent with the Preamble, Comments, or text of the ABA Model Rules of Professional Conduct or the ABA Code of Judicial Conduct; and
 - c. is not inconsistent with generally accepted principles of the law of lawyering.
3. Subject to litigation sanction asks whether the conduct described in the question would subject the lawyer or the lawyer's law firm to sanction by a tribunal such as contempt, fine, fee forfeiture, disqualification, or other sanction.
4. Subject to disqualification asks whether the conduct described in the question would subject the lawyer or the lawyer's law firm to disqualification as counsel in a civil or criminal matter.
5. Subject to civil liability asks whether the conduct described in the question would subject the lawyer or the lawyer's law firm to civil liability, such as claims arising from malpractice, misrepresentation, and breach of fiduciary duty.
6. Subject to criminal liability asks whether the conduct described in the question would subject the lawyer to criminal liability for participation in, or aiding and abetting criminal acts, such as prosecution for insurance and tax fraud, destruction of evidence, or obstruction of justice.

The correct response is often a restatement of the applicable rule. Therefore, knowledge of the Model Rules, including the comments, is required to pass the MPRE. For example, in the example question provided above, the correct answer is the multiple choice answer that states the applicable rule - no, the lawyer is not subject to discipline because the information was subject to the duty of confidentiality. Model Rule 1.6(a) states in part that “[a] lawyer shall not reveal information relating to the representation of a client unless the client gives informed consent.”⁵⁰ Because the investigator's report was obtained as part of the representation of the client, the attorney properly withheld the information from the plaintiff's attorney.⁵¹

Passing the MPRE is required for admission to the bar in all states but Maryland, Washington, and Wisconsin. Pass rates for first time examinees historically range in the neighborhood of 50% to 70%.⁵²

Enforcement

A well-refined process exists to hold lawyers accountable for ethical lapses. Oklahoma provides an example (Figure 1).⁵³ The process begins with a client or attorney complaint being filed in the Office of the General Counsel. An investigation then takes place and a recommended course of action is forwarded to the Professional Responsibility Commission. The Commission is comprised of five attorneys and two laypersons.

The Commission's actions can range from dismissal of the complaint to filing a complaint with the state's Supreme Court. A trial panel comprised of 14 attorneys and seven laypersons then reviews the case and files a report with the court. The court then considers the matter and issues its ruling. Penalties include private reprimand, public censure, suspension, and disbarment.

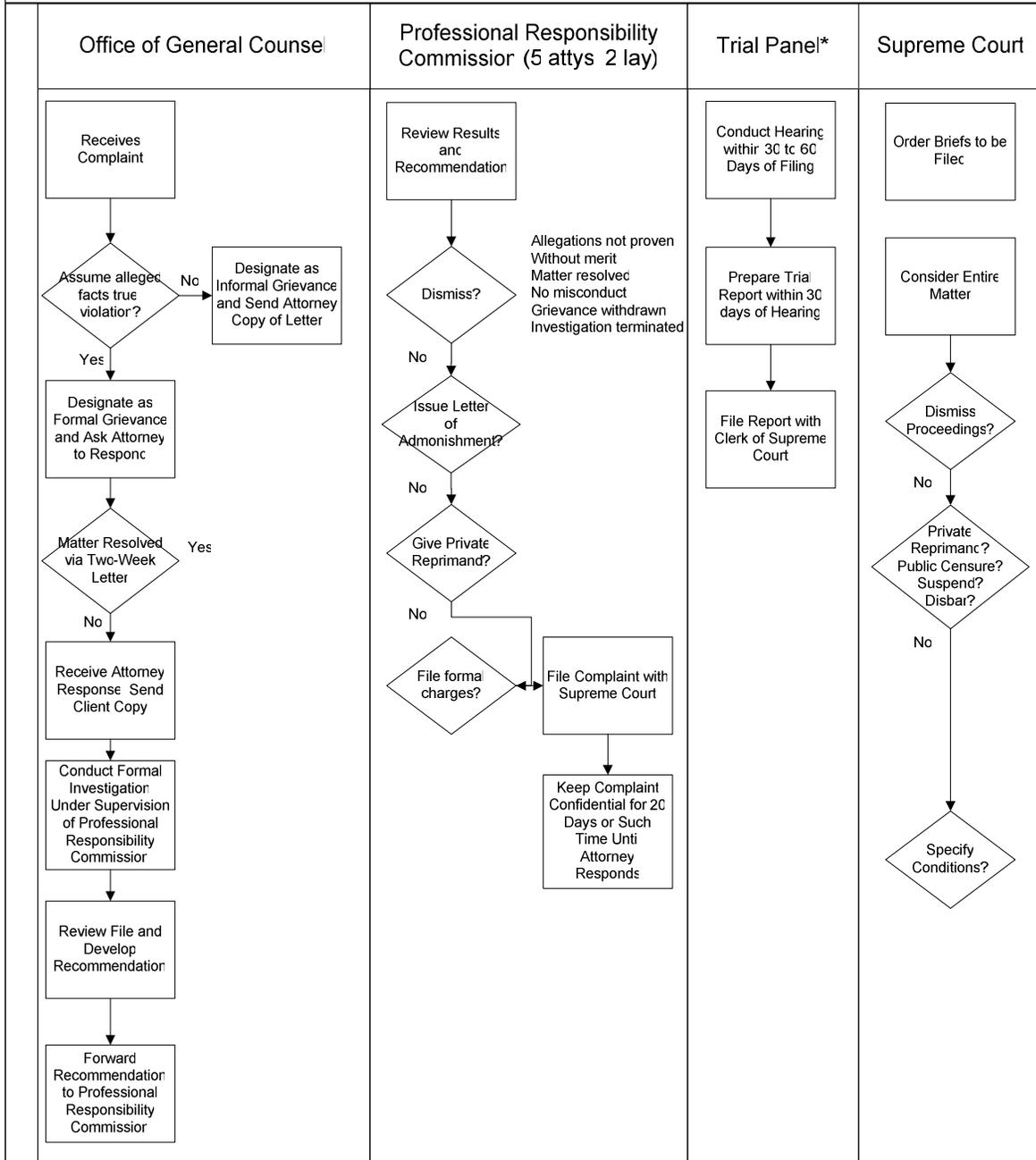
Suggestions for Engineering Educators

Our comparison of the teaching of engineering ethics with that of legal ethics leads to four suggestions for engineering educators.

Work at clarifying the NSPE Code. The NSPE Code might appear at first glance to be a set of “hard and fast” rules, obvious in their meaning and implementation.⁵⁴ However, the NSPE Code, like all other codes of ethics, requires interpretation.⁵⁵ The legal profession has attempted to clarify its ethical rules through such devices as terminology sections, official comments, ethics opinions, and restatements, all of which are related to specific ethical rules. The NSPE Code could benefit from a similar undertaking.

Create a reporter system for ethics cases. Unlike legal ethics cases and opinions, engineering ethics cases and opinions are decentralized, generally not organized by rule, and difficult to search. A faculty member who wishes to compare how state licensing boards differ in their interpretation of NSPE Code Section III.4, disclosure of confidential information, would be hard pressed to do so easily.

Figure 1. Process Used in Addressing Alleged Lawyer Misconduct and Incapacity



* Three person panel drawn from Professional Responsibility Tribunal (14 attys 7 lay)

Teach the NSPE Code. The NSPE Code should be the centerpiece of engineering ethics textbooks in much the same way the ABA Model Rules are the centerpiece of legal ethics textbooks. The Code should also be the centerpiece of case study material. A case study on the Space Shuttle Challenger Launch Decision⁵⁶ that asks worthwhile questions such as, “How might Morton-Thiokol engineers have convinced NASA and their own management to postpone

the launch?,⁵⁷ does little in the way of teaching an engineer what ethical rules were involved in that decision.

Test students' knowledge of the rules. Engineering as a discipline contains subjects in which knowledge of the rules is important. Exams then test the knowledge of those rules. To discount the rules in the teaching and testing of engineering ethics is, at a certain level, equivalent to discounting the rules in the teaching and testing of engineering sciences. Engineering students should graduate knowing the NSPE Code and having been tested on it. All law students must pass a course on professional responsibility in which they are tested on their knowledge of the ABA Model Rules. This requirement is in addition to successfully completing the MPRE Exam for licensure.

Conclusion

Although the ethical behavior of attorneys is frequently called into question in the media and the collective public conscience, the training of attorneys in their professional responsibilities goes beyond what is seen in any engineering curricula. Further, the policing and enforcement of legal ethical violations is rigorous. Engineering educators may serve the engineering profession greatly by considering the legal model of professional responsibility training. The case method of studying ethical behavior, ethical violations, and the fine line distinctions between the two would provide a concrete basis for professional responsibility training. Also, broadening the scope beyond “ethics” to “professional responsibility” will serve our students well and aid to enhance the reputation of the engineering profession.

¹ Public Perceptions of Lawyers Consumer Research Findings, American Bar Association, 2002, <http://www.abanet.org/litigation/lawyers/> (accessed Jan. 12, 2006).

² The McDonald's coffee cup case is an example. Despite a decade-long history of burn litigation, McDonald's had refused to lower the coffee temperature, which ranged from the 180 to 190 degrees Fahrenheit. Stella Liebeck, an elderly woman, suffered third degree burns when she spilled a cup unto her lap. The jury awarded \$2.7 million in punitive damages and \$160,000 in compensatory damages. The jury award was widely reported. The media failed to report that this award was subsequently reduced 75% by the judge. McDonald's Settles Lawsuit over Burn from Coffee, *The Wall Street Journal*, Dec. 2, 1994, B6. See also Legal Beat: Truth is the First Casualty of Tort Reform Debate, *The Wall Street Journal*, May 7, 1995, B1.

³ Or, for that matter, his or her own attorney, especially in those cases in which the outcome turned out to less than was expected.

⁴ American Bar Association, 2004 Survey on Lawyer Disciplinary Systems, Chart II Sanctions Imposed, <http://www.abanet.org/cpr/discipline/sold/sold-home.html> (accessed Jan. 12, 2006).

⁵ American Bar Association, National Lawyer Population by State, <http://www.abanet.org/marketresearch/2005nbrolawyersbystate.pdf> (accessed Jan. 12, 2006).

⁶ See e.g. Oklahoma Bar Association Grievance Form, <http://www.okbar.org/members/gencounsel/complain.pdf> (accessed Jan. 12, 2006).

⁷ See Texas Board of Professional Engineers PE Roster, http://www.tbpe.state.tx.us/PE_Roster.xls (accessed Jan. 12, 2006)

⁸ Estimate based on Texas Board of Professional Engineers, Disciplinary Actions, Jan. 15, Apr. 22, June 16, and Oct. 7 2004 Board Meetings, <http://www.tbpe.state.tx.us/disciplinary.htm> (accessed Jan. 12, 2006).

⁹ The Texas Engineering Practice Act provides a typical exemption to the licensure requirement for engineers. “A person who is an employee or subordinate of an engineer is exempt from the licensing requirements . . . if the person's practice does not include responsible charge of design or supervision.” Tex. Stat. Ann. § 1001.052 (2006). Another exemption applies to employees of private corporations whose “activities relate[] only to the research,

development, design, fabrication, production, assembly, integration, or service of products manufactured by the entity.” *Id.* at § 1001.057(a)(2).

¹⁰ The Bureau of Labor Statistics estimates the number of persons engaged in the practice of engineering in Texas at 108,920. Bureau of Labor Statistics, November 2004 State Cross-Industry estimates, state_dl.xls (accessed Feb. 21, 2006). Accounting for the 41,000 registered professional engineers in the state leaves 68,000 engineers unregistered.

¹¹ In Oklahoma nearly all of the sanctions levied by the Board were for unauthorized practice of engineering without a license. *See generally e.g.* Oklahoma State Board of Licensure for Professional Engineers & Land Surveyors, The Board’s Bulletin, Disciplinary Activity, March 24-25, 2005, Vol. 19, No. 52 (Spring) 2005. Available at <http://www.pels.state.ok.us/admn/4114%202005%20Spring.pdf> (accessed Jan. 14, 2006).

¹² *See* Tamara Larson, The Evolution of Engineering Ethics during the Last 150 Years, Civil Engineering, March 2003.

¹³ Harold P.E. Stern and Russell L. Pimmel, An Instructional Model for Engineering Ethics, 32nd ASEE/IEE Frontiers in Education Conference, 2002, S3F13.

¹⁴ *See* The Online Ethics Center for Engineering and Science, <http://onlineethics.org> (accessed Jan. 9, 2006); *see also* The Murdough Center for Engineering Professionalism, <http://www.murdough.ttu.edu/pd.cfm?pt=Murdough> (accessed Mar. 7, 2006).

¹⁵ This review of the historical development of the lawyer’s professional code of ethics is drawn from Thomas D. Morgan & Ronald D. Rotunda, Professional Responsibility: Problems and Materials (8th Ed.), Foundation Press, 2003, 11.

¹⁶ *See* Thomas D. Morgan and Ronald D. Rotunda, 2004 Selected Standards on Professional Responsibility, Appendix B and C, Foundation Press, 2004 [hereinafter “Selected Standards”]. The 1983 version of the Model Rules is often referred to as the “pre-2002” rules.

¹⁷ Iowa, Maine, Nebraska, New York, Ohio, Oregon. *See id.*, Appendix B.

¹⁸ Oklahoma is an example. *See* Standards of Professional Conduct, <http://www.okbar.org/ethics/standards.htm> (accessed Jan. 12, 2006).

¹⁹ A copy of the Model Rules are available at http://www.abanet.org/cpr/mrpc/model_rules.html (accessed Jan. 12, 2006).

²⁰ *See* Selected Standards, *supra* n. 16 at 10-12.

²¹ *Id.* at 27-36.

²² http://www.abanet.org/cpr/mrpc/rule_1_0.html (accessed Jan. 12, 2006).

²³ The NSPE’s Code of Ethics is available at <http://www.nspe.org/ethics/eh1-code.asp> (accessed Jan. 12, 2006).

²⁴ *See* Webster’s Collegiate Dictionary (10th Ed.).

²⁵ *See* NSPE Board of Ethical Review Cases, <http://www.niee.org/pdd.cfm?pt=NIEE&doc=EthicsCases> (accessed Jan. 13, 2006).

²⁶ *See Opinions of the Ethical Review Board: Vol. VIII* (Nat’l. Soc. Prof. Engineers 1999) *see also Engineering Ethics: Concepts, Viewpoints, Cases, and Codes* 222-324 (Nat’l. Inst. Engineering Ethics 2004) [hereinafter Nat’l. Institute Engineering Ethics].

²⁷ Morgan & Rotunda, *supra* n. 15 at 13.

²⁸ *See* Thomas A. Woxland, “Forever Associated with the Practice of Law”: The Early Years of the West Publishing Company, 5 Leg. Ref. Servs. Q. 115 (Spring 1985).

²⁹ The authors would like to gratefully acknowledge the contribution of Ms. Meredith Dibert, J.D. Candidate Univ. of Tulsa College of Law, for her work in compiling this table.

³⁰ 92 Ohio St.3d 92, 748 N.E.2d 1091 (Ohio 2001).

³¹ A Code rule is cited because Ohio is a Code state and not a Model Rules state.

³² *See generally e.g.* Texas Board of Professional Engineers Disciplinary Actions, <http://www.tbpe.state.tx.us/disciplinary.htm>.

³³ An exception to this general observation is NSPE Board of Ethical Review opinions.

³⁴ Michael Davis, *Three Myths about Codes of Engineering Ethics* 8, 14, IEEE Technology and Society Magazine, (Fall 2001).

³⁵ Oklahoma Bar Association Ethics Opinion No. 316, <http://www.okbar.org/ethics/316.htm> (accessed Jan. 13, 2006).

³⁶ *Id.*

³⁷ American Law Institute (2000).

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- ³⁸ Our description of the Restatements and their drafting process is based on Harvey S. Perlman, *The Restatement Process*, 10 Kan. J.L. & Pub. Policy 2 (2000).
- ³⁹ See e.g. Restatement (Third) of Law Governing Lawyers: Cumulative Pocket Part supplements: vols. 1 & 2. American Law Institute (2005).
- ⁴⁰ Public Company Accounting Reform and Investor Act, Pub .L. 107-204, 116 Stat. 745 (2002). The Act is codified in sections 15 and 18 U.S.C. (Supp. 2004).
- ⁴¹ See Selected Standards, *supra* n. 16 at 54.
- ⁴² See <http://www.abanet.org/legaled/standards/foreword.html> (accessed Dec. 8, 2005).
- ⁴³ Standards for Approval of Law Schools and Interpretations 2005-06, American Bar Association, available at <http://www.abanet.org/legaled/standards/standards.html> (accessed Dec. 8, 2005).
- ⁴⁴ *Id.*, ch. 3.
- ⁴⁵ See <http://www.abanet.org/legaled/approvedlawschools/approved.html> (accessed Jan. 10, 2006).
- ⁴⁶ See <http://west.thomson.com/store/searchresults.asp?Keyword=professional+responsibility&x=16&y=9> (accessed Mar. 7, 2006).
- ⁴⁷ This section makes direct use of material prepared by The National Conference of Bar Examiners, <http://www.ncbex.org> (accessed Jan. 11, 2006).
- ⁴⁸ The exception here is questions on judicial ethics. Those questions are based on the ABA Model Code of Judicial Conduct, http://www.abanet.org/cpr/mcjc/mcjc_home.html (accessed Jan. 12, 2006).
- ⁴⁹ Practicing Law Institute Multistate Bar Review, Practice Exam 2 Question 1, <http://www.mbe.pli.edu/freempire/>
- ⁵⁰ See Selected Standards, *supra* n. 16 at 22.
- ⁵¹ PLI's Multistate Bar Review, Answer Sheet to Exam 2, <http://mbe.pli.edu/freempire/practiceexams/answerexam2.htm> (accessed Mar. 8, 2006).
- ⁵² See generally MPRE 2004 Statistics, http://www.ncbex.org/pubs/pdf/740205_2004statistics.pdf. (accessed Jan. 11, 2006).
- ⁵³ Author unknown, Ethics 101: What Does the General Counsel Do?, date unknown.
- ⁵⁴ See Davis, *supra* n. 34, at 11.
- ⁵⁵ *Id.* The same could be said for the application of engineering design rules.
- ⁵⁶ Nat'l. Center Engineering Ethics, *supra* n. 26, at 147-158.
- ⁵⁷ *Id.* at 155.