Core Values of the Legal Profession:
Introduction to Legal Ethics and Professionalism

UND School of Law Orientation
Tuesday, August 16, 2016

I. Law Student Professionalism

- “The Paper Chase”

- The Rigors of Law School:
  
  Motivations -- External/Extrinsic vs. Internal/Intrinsic

  - Interpersonal Professionalism: Faculty, Staff, and Your Student Colleagues

  - Becoming a Lawyer: Developing Good Habits for Future Law Practice

II. The Lawyer as Professional: Role and Identity

What is the difference between a lawyer’s professional “role” and a lawyer’s professional “identity”?

What are the two (2) primary “functional” aspects of the lawyer’s professional role?

- Lawyer as Advisor

- Lawyer as Advocate

What are the three (3) primary “philosophical” conceptions of the lawyer’s professional role?

- The “Business Person” Conception

- The “Standard” Conception

- The “Friend/Neighbor” Conception
III. Legal Ethics for Lawyers in the Advising Role: An Illustration and Application

Hypothetical for Discussion: Advising Dr. Sam Patterson

Facts*

Dr. Sam Patterson is a well-known surgeon [in the local community]. He has been represented in various estate planning matters by the law firm of Taylor & Moore. He is particularly comfortable with Cheryl Taylor, one of whose children is away at medical school in part as a result of connections and recommendations of Dr. Patterson. Cheryl Taylor, however, is out of the office for two weeks, and on this occasion Dr. Patterson will be visiting with Mary Marshall, a relatively new associate in the law firm. After introductions, Dr. Patterson begins to explain his difficulty to Mary Marshall:

Dr. Patterson: I want you to understand something: from you I want legal advice, not moralizing. I have my own code of ethics that I will follow or not as I choose. What I want from you is legal advice.

Ms. Marshall: I understand. You should be aware, however, as I’m sure you are, that at times moral guidance and legal advice point in the same direction.

Dr. Patterson: Sure . . . sure. I think I made a mistake in an operation I performed yesterday. I failed to complete one part of the procedure. It will not come to light, if at all, for some considerable time. Even then, it is altogether likely that it will produce a kind of harm to the patient that will not be easily traceable to my error. I want to know from you whether my potential liability is greater if I disclose the error now or if it is discovered some years from now. I estimate that there is a 10% chance that my error will produce harm that will be traceable to my work. I want to know if my failure to disclose the error now will increase my potential liability by 10 times, thereby offsetting what I calculate to be the chances of my being held responsible for the matter.

* The facts of this hypothetical are quoted from JAMES E. MOLITERN, ETHICS OF THE LAWYER’S WORK 77 (2d. ed. 2003), with the exception of minor changes to the spacing and formatting of the hypothetical and identifying the speakers in the dialogue by name.
Mary Marshall was dumbfounded. She simply could not believe what she was hearing. She tried to get words out.

Ms. Marshall: Obviously you have to tell the patient what you’ve done.

Dr. Patterson: I guess you didn’t hear me correctly in the beginning. I wasn’t terribly happy about talking with someone other than Cheryl Taylor about this matter, but I felt I needed to talk with someone today. You can’t be more than 25 years old. I am. I told you at the beginning that I wanted to hear your legal conclusions. I certainly don’t expect you to give them to me off the top of your head. I want an answer to my legal question and nothing more. Can I expect to hear something from you about my potential liability within the next few days or few weeks?

Ms. Marshall: I suppose so.

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Some Relevant “Black Letter” Law about Lawyer Conduct

ABA Model Rule of Professional Conduct 1.6(a) (“Confidentiality of Information”) provides that “[a] lawyer shall not reveal information relating to the representation of the client unless the client gives informed consent, the disclosure is impliedly authorized in order to carry out the representation or the disclosure is permitted by paragraph (b).”

ABA Model Rule of Professional Conduct 1.6(b)(1) (“Confidentiality of Information”) provides that “[a] lawyer may reveal information relating to the representation of a client to the extent the lawyer reasonably believes necessary . . . to prevent reasonably certain death or substantial bodily harm.”

Note: In some jurisdictions, such as North Dakota, the rule of professional conduct on confidentiality provides that “[a] lawyer is required to reveal information relating to the representation of a client to the extent the lawyer believes reasonably necessary to prevent reasonably certain death or substantial bodily harm.” N.D. Rules of Prof’l Conduct R. 1.6(b) (emphasis added).
ABA Model Rule of Professional Conduct 2.1 ("Advisor") provides that “in representing a client, a lawyer shall exercise independent professional judgment and render candid advice. In rendering advice, a lawyer may refer not only to law but to other considerations such as moral, economic, social and political factors, that may be relevant to the client’s situation.”

**Note:** Comment [3] to Rule 2.1 explains that “[a] client may expressly or impliedly ask the lawyer for purely technical advice. When such a request is made by a client experienced in legal matters, the lawyer may accept it at face value. When such a request is made by a client inexperienced in legal matters, however, the lawyer’s responsibility as advisor may include indicating that more may be involved than strictly legal considerations.”
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Interactive Exercise

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Questions for Discussion – Worksheet (Not To Be Collected)

(1) Put yourself in Mary Marshall’s shoes: What will be your first step in deciding what to do? (Learning Mode: Self-Reflection)
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________________________________________________________________________________________
________________________________________________________________________________________
________________________________________________________________________________________

(2) What additional facts, if any, would help you in deciding what to do? (Learning Mode: Pair and Share)
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(3) How may (and how should) moral considerations affect the advice a lawyer provides a client about a legal situation? (Learning Mode: Small Group Discussion)
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________________________________________________________________________________________
________________________________________________________________________________________
________________________________________________________________________________________

(4) If you are Mary Marshall, will moral considerations affect the advice you will give or other actions you will take? If so, how? (Learning Mode: Large Group Discussion)
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