

Ethics and Professionalism in a Global Environment

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I. Introduction.¹

Lawyers have been recognized for the vital role they play in the preservation of society, representing clients, serving as officers of the legal system and as public citizens having a special responsibility for the quality of justice.² These noble accountabilities provide a framework, but little detail, for a discussion of ethics and professionalism in a global environment. This article will explore some of that detail, taking a practical look at the realities of ethics in today's fast-paced world, considering some common tenets of legal ethics codes and discussing professionalism and its rise to prominence in the practice of law.

II. The Realities of the Global Marketplace.

For many lawyers, international practice is inevitable. Cross border transactions and disputes are on the rise, and more foreign clients are seeking host country legal assistance. This ever changing environment lends uncertainty to any conversation about ethics today. Five realities frame that conversation, as the number and diversity of stakeholders for most global businesses increase, more laws are being enacted in response to perceived ethical lapses, overlapping guidelines are confusing the standards of expected behavior, public opinion is dictating what is right and wrong and technology has sent ethics sailing into uncharted waters.

A. Diverse Stakeholders.

The first reality is that there are many stakeholders in today's global marketplace. Investors around the world are looking beyond operational and financial results, to the ethics and social cultures of their investees. Employees, contractors and business partners all share vested interests in the success of the companies with which they associate. Host country governments and local communities are key stakeholders for those doing business within their boundaries. Non-governmental organizations also play a stakeholder role, drawing attention to important topics in a wide array of areas.

The social responsibility programs of many lawyers' corporate clients are expanding to cover stakeholder concerns, with companies seeking to responsibly address social and environmental issues raised in the course of business through support for international norms and sustainable practices in such areas as broad-based human rights, labor rights, rights of indigenous peoples, environmental stewardship and transparency.³ Legal and regulatory compliance is also integral to those programs. Many companies are publishing sustainability reports to highlight their efforts to the stakeholder community.

¹ The author would like to thank Mary Waters and Vickie Graham at Noble Energy, Inc. for their assistance in the preparation of this article. The views expressed herein are those of the author, not of Noble Energy, and no attempt is made to render legal advice.

² ABA MODEL R. PROF. CONDUCT Preamble §§ 1 and 13 (2015).

³ Attributed to Kofi Annan, Sec'y-Gen., U.N., Address to World Economic Forum, Jan. 28, 2001.

B. Laws Reflecting Ethics.

The second reality is that more laws are being enacted, and enforced, in response to perceived ethical lapses. The fight against corruption is an obvious example, with the United States (“U.S.”) Foreign Corrupt Practices Act of 1977⁴ and United Kingdom (“U.K.”) Bribery Act of 2010⁵ garnering much recent attention. Most countries have similar laws in place. Protection of human rights is an area of emphasis due to concerns over violence against women and children, sexual violence in conflict, genocide, indigenous people, children in armed conflict and human trafficking.⁶ Governance is another area, with examples in the U.S. including the Sarbanes-Oxley Act of 2002,⁷ which was passed by Congress in a targeted effort to restore confidence in the financial markets after a series of major corporate scandals, and the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010,⁸ which takes steps to reform the U.S. financial regulatory system.

C. Overlapping Guidelines.

The third reality is that overlapping guidelines are confusing the standards of expected behavior. Legal ethics principles vary by jurisdiction, from common law to civil law, between barristers and solicitors, and in effect. Some are mandatory while others permissive. In some cases multiple organizations impose requirements within the same jurisdiction.

U.S. lawyers are generally licensed at a state level, and thus subject to mandatory legal ethics rules of their state — most of which are based on the American Bar Association Model Rules of Professional Conduct (“U.S. Rules”).⁹ Similarly, the Council of Bars and Law Societies of Europe has adopted a Code of Conduct for European Lawyers (“European Code”)¹⁰ that provides a statement of common rules applicable to all lawyers from the European economic area regardless of what bar or law society they belong to in relation to their cross-border practice.¹¹ It respects member state requirements, but seeks to bridge the gaps between them.

One advisory code goes further. The International Bar Association adopted the International Principles on Conduct for the Legal Profession in an effort to establish a generally accepted framework to serve as a basis upon which codes of conduct may be implemented by the

⁴ 15 U.S.C. § 78m (accounting provisions for issuers) and 15 U.S.C. §§ 78dd-1, 78dd-2, 78dd-3 (anti-bribery provisions for issuers, domestic concerns and other persons).

⁵ The Bribery Act, 2010, c. 23 (U.K.).

⁶ See U.N. Human Rights homepage, <http://www.un.org/en/sections/what-we-do/protect-human-rights/index.html> / (visited Apr. 7, 2015) (each area representing a thematic issue to U.N. efforts).

⁷ See Sarbanes-Oxley Act of 2002, Pub. L. No. 107-204, 116 Stat. 745 (codified in scattered sections of 11, 15, 18, 28, and 29 of U.S.C.).

⁸ See Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. No. 111-203, 124 Stat. 2010.

⁹ U.S. Rules, hereafter cited as ABA MODEL R. PROF. CONDUCT (2015).

¹⁰ CODE OF CONDUCT FOR EUROPEAN LAWYERS, adopted at plenary session of the Council of Bars Oct. 28, 1998, as amended (2006), hereafter EUROPEAN CODE (2006).

¹¹ EUROPEAN CODE § 1.3.1 (2006).

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