



1-9-2024

“Zealous” Professional Ethics: The Transcendence of Natural Law, Legal Positivism, and the Ethical Stage in the U.S. Legal Ethics System and the Moral Dilemma that Surround Zealous Representation

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Recommended Citation

Sudarsanan Sivakumar & Marshall Maina, *“Zealous” Professional Ethics: The Transcendence of Natural Law, Legal Positivism, and the Ethical Stage in the U.S. Legal Ethics System and the Moral Dilemma that Surround Zealous Representation*, 14 ST. MARY'S J. ON LEGAL MALPRACTICE & ETHICS 94 (2024).

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ARTICLE

Sudarsanan Sivakumar | Marshall Maina

“Zealous” Professional Ethics: The Transcendence of Natural Law, Legal Positivism, and the Ethical Stage in the U.S. Legal Ethics System and the Moral Dilemma that Surround Zealous Representation

Abstract. The zealous pursuit of law has its own ideals and dogma that sets it apart from the other rules in the Model Rules of Professional Conduct. Decades after many enactments and amendments, there still exists many debates considering its operation as to whether an attorney owes a duty toward society over the representation of the client. This is a Delphi method that has made even the best seasoned ‘Justiciar’ and ‘Legislator’ unable to find the proper guidelines to implement upon the Legal Superstructure. The Model Rules of Professional Conduct attempt to clear the fog around the existing principle of Zealous Representation, but clouded grey areas of the rules still exist. In many ways, unraveling this knot is similar to picking apart a spider’s web without damaging its intricate design. This paper tries to unknot the Gordian Knot of zealous representation and offers an overview of the complex relationship between Natural Law, Legal Positivism, and the General Principles of Morality with Legal Ethics and the conflict that arises between the inherent sense of justice and fairness with the Model Rules during a lawyer’s representation of clients. In addition, this paper offers some tentative suggestions that attorneys should be aware of the ethical constraints of their profession and should not exceed the scope of their authority when representing their clients. To ensure proper representation of their clients, attorneys must understand and adhere to the ethical boundaries of their

profession. The authors attempt to apply existing citations and precedents to point out the boundary of zealous representation.

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[A]n advocate, in the discharge of his duty, knows but one person in all the world, and that person is his client. To save that client by all means and expedients, and at all hazards and costs to other persons . . . is his first and only duty; and in performing this duty he must not regard the alarm, the torments, the destruction which he may bring up others. Separating the duty of a patriot from that of an advocate, he must go on reckless of the consequences, though it should be his unhappy fate to involve his country in confusion.

—Henry Lord Brougham (later Lord Chancellor, *Queen Caroline’s case* (1821))¹

I. IN THE BEGINNING, LADY JUSTICE UNBALANCED THE SCALES:
INTRODUCTION

The feudal and dark ages saw a meteoric rise in chaos and destruction. Medieval times saw law and ethics regulated in a crude and cruel way.² In that era of pandemonium, the lawyers who were supposed to be officers of the court were compared to a moral strain in the community. These so-called canonists embraced the full power of ecclesiastical legal principles and were anything but professional.³ Medieval poets saw lawyers as scorn in society and theologians dismissed lawyers as a moral leper juxtapositioned with usurers and adulterers.⁴ Quite possibly adhering to that view, Justice Louis Brandeis expressed how both the public and lawyers themselves have a declining image of the profession.⁵ This is possibly

1. Monroe H. Freedman, *Henry Lord Brougham, Written by Himself*, 19 GEO. J. LEGAL ETHICS 1213, 1215 (2006) (citing 2 THE TRIAL OF QUEEN CAROLINE 3 (1821)).

2. C.N. Trueman, *Medieval Law and Order*, HISTORY LEARNING SITE (Mar. 5, 2015), <https://www.historylearning-site.co.uk/medieval-england/medieval-law-and-order/> [<https://perma.cc/XD5Y-ENKL>].

3. See generally Brian Tierney, *The Canonists and the Mediaeval State*, 15 REV. OF POL., July 1953 at 378 (explaining medieval cannon law).

4. See James. A. Brundage, *The Medieval Advocate’s Profession*, 6 LAW & HIST. REV. 439, 439 (1988) (describing a professional lawyer during medieval times).

5. See Leonard Gross, *The Public Hates Lawyers: Why Should We Care?*, 29 SETON HALL L. REV. 1405, 1414 (1999) (quoting Justice Brandeis who stated “[I]nstead of holding a position of independence, between the wealthy and the people, prepared to curb the excesses of either, able lawyers have, to a great extent, allowed themselves to become adjuncts of great corporations and have neglected their obligation to use their powers for the protection of the people”); see ANTHONY T.

because the standards of legal profession were a mix of human law and religious dogma.⁶ In a pre-biblical society in the West, it makes sense that a lawyer would have been viewed poorly, as canonists are religious in nature. As society progressed, so did the law. The canon of law quickly became embedded with “natural law” and ensured stability.⁷ Natural law is defined as “a body of law or a specific principle held to be derived from nature and binding upon human society in the absence of or in addition to positive law.”⁸

By the 1700s, the legal profession in the United States acted as a bulwark in the English colonies, using the English common law as a catalyst to help regulate the community.⁹ As immigration increased, the United States legal sphere also evolved to what we know and adhere to today. United States law emulsified with the principles of natural law, the common law brought by people from Britain, and the code-based legal tradition bought by immigrants from continental Europe sometime around 1840–1910.¹⁰

As a land of immigrants, the United States of America is a melting pot of cultures within its legal system and its practitioners. This “Egg of Columbus” is the product of this unique American ethnicity created by such expatriates who become one with the land.¹¹ The ebbs and flows of the legal profession throughout the twentieth and twenty-first centuries were a

KRONMAN, *THE LOST LAWYER: FAILING IDEALS OF THE LEGAL PROFESSION* 23 (1993) (explaining how progressives such as Justice Brandeis provide an example of syncretism).

6. Brundage, *supra* note 4, at 440.

7. See generally Stephan Kuttner, *Natural Law and Canon Law*, https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=&ved=2ahUKewjglZrmvP2BAxWNkGoFHc3EDAcQFnoECCMQAQ&url=https%3A%2F%2Fscholarship.law.nd.edu%2Fcgi%2Fviewcontent.cgi%3Freferer%3D%26httpsredir%3D1%26filename%3D7%26article%3D1003%26context%3Dnaturallaw_proceedings%26type%3Dadditional&usq=AOvVaw1MMeXk2wTPN2ENxUmTuWKB&opi=89978449 [https://perma.cc/5Z62-KLX5] (analyzing the similarities and differences of Canon Law and Natural Law).

8. See *Natural Law*, MERRIAM-WEBSTER.COM, <https://www.merriam-webster.com/dictionary/natural%20law> [https://perma.cc/DZ6E-WLCH] (defining natural law).

9. See generally KRONMAN, *supra* note 5, at 180–81 (explaining how jurisprudential writers felt contempt for the common-law tradition because of its ability to have “immense influence . . . on Anglo-American jurisprudence”).

10. CHARLES F. ABERNATHY & MARKUS G. PUDER, *LAW IN THE UNITED STATES CASES AND COMMENTARIES* 3 (3d ed. 2021).

11. See *Columbus’ Egg—Turning a Good Story on its Head*, BEYOND TOSCANO, <https://www.beyondtoscano.com/idiomatic-expression/columbus-egg-turning-a-good-story-on-its-head-257/> [https://perma.cc/W2DX-757N] (explaining the origin of the popular expression “Egg of Columbus”).

series of ups and downs of public approval.¹² Nevertheless, the profession maintained its moral stand owing solely to the American Bar Association’s Rules of Professional Conduct and the inherent sense of justice that humanity has.

On the one hand, lawyers do judge the clientele they represent. Even though it is the duty of the judge to judge, we are all subject to the basic principles of right and wrong that we are born with and the ones that are instilled in us throughout our lives. On the other hand, this code of ethics sets the benchmark of ethical procedures followed by all manner of lawyers, irrespective of the state they are licensed in.¹³ It is clearly understood from the Model Rules that every lawyer has a duty to represent a client zealously to the best of the lawyer’s abilities, subject to certain exceptions.¹⁴ But, what happens when a dangerous criminal is repatriated into society either due to an error in judgment or owing to the skillful and effective representation made by the defense attorney? An attorney must be competent when representing a client.¹⁵ But, where is the invisible line that separates his duty as a guardian of the law and his duty toward a client? Kierkegaard would argue that “a divine command from God *transcends* ethics.”¹⁶ “This means that God does not create human morality, that it is up to individuals to create morals and values.”¹⁷ True to that predication, on September 25, 1963, the Former Attorney General of the United States Robert F. Kennedy in his statement to the Permanent Subcommittee on Investigations of the Senate Government Operations Committee famously quoted that “[i]n the words of the old saying, every society gets the kind of criminal it deserves. What

12. Roscoe Pound, *What is a Profession—the Rise of the Legal Profession in Antiquity*, 19 NOTRE DAME L. REV. 203, 206 (1944).

13. *The Kutak Commission*, KUTAK ROCK ATTORNEYS AT LAW, <https://www.kutakrock.com/general-content/the-kutak-commission> [https://perma.cc/MD2Y-ZQR7].

14. See MODEL RULES OF PROF’L CONDUCT preamble ¶ 2 (AM. BAR ASS’N 2023) (explaining a lawyer’s duty of competence).

15. See *id.* R. 1.1 (establishing the responsibility of a lawyer to provide competent representation and defining what that looks like).

16. See SOREN KIERKEGAARD, *Excerpts from Various Works*, in WORDS OF WISDOM: INTRO TO PHILOSOPHY 357, 364 (Jody L. Ondich ed. 2018) (emphasis in original) (summarizing Kierkegaard’s writings differentiating logic from the pursuit for objective facts and an individual’s subjective relationship with God).

17. See *id.* at 364 (disagreeing with Kierkegaard’s theory of a teleological suspension of the ethical whereby individuals must cast aside ethical obligations when receiving commands from God).

is equally true is that every community gets the kind of law enforcement it insists on.”¹⁸

II. ORIGIN OF THE MODEL RULES OF PROFESSIONAL CONDUCT—THE ETHICAL STAGE

The rules initially found their origin in the Alabama Code of 1887 which was formulated by the Alabama Bar Association.¹⁹ This was the first codified set of ethical provisions promulgated in nineteenth century United States.²⁰ Soon after, the American Bar Association adopted the Alabama Code in the year 1908, giving birth to the Canon of Ethics of 1908.²¹ Soon after, this Canon of Ethics was restated into the Model Code of Professional Responsibility of 1969.²² A tripartite form of organization was used in which nine substantive canons were followed by some philosophical considerations, and disciplinary provisions. Thereafter, the Model Code was adopted by each states’ jurisdictional authority and was then implemented by the various agencies of the states.²³

During the scandalous Watergate era, a time when the previous Model Code of Professional Responsibility was still in operation, the American Bar Association created a commission to review and create a complete restatement of the Model Code.²⁴ The old code did not address many conflicts, did not provide feasible grounds of regulation, and with the modernization of society and its citizenry, the ABA incorporated the “Kutak

18. Robert F. Kennedy, Att’y Gen., U.S. Dep’t of Justice, Statement to the Permanent Subcommittee on Investigations of The Senate Government Operations Committee (Sept. 25, 1963) (insisting continued public interest is the strongest force to conquer organized crime).

19. See Allison Marston, *Guiding the Profession: The 1887 Code of Ethics of the Alabama State Bar Association*, 49 ALA. L. REV. 471, 471 n.2 (1998) (“The foundation of the Canons of Ethics, adopted by the [American] Bar Association in 1908, was the Code of Ethics adopted by the Alabama State Bar Association December 14, 1887, formulated by Judge Thomas Goode Jones.” (quoting MARY LOUISE RUTHERFORD, *THE INFLUENCE OF THE AMERICAN BAR ASSOCIATION ON PUBLIC OPINION AND LEGISLATION* 89 (1937))).

20. See *id.* at 471–72 (explaining how the Alabama Code of 1887 was a response to the legal profession’s expansion in the post-civil war era).

21. See CANONS OF PROF’L ETHICS (AM. BAR ASS’N 1908) (outlining duties and rules lawyers must uphold).

22. See MODEL RULES OF PROF’L CONDUCT preface (describing the creation of the Model Code of Professional Responsibility).

23. See *The Kutak Commission*, *supra* note 13 (discussing Robert J. Kutak’s role in shaping the American Bar Association’s Model Rules of Professional Conduct).

24. See *id.* (describing the process of creating the restatement).

Commission” headed by Robert Kutak to propose the necessary restatements.²⁵ The House of Delegates of the American Bar Association approved the Old Code in 1969.²⁶ In most respects, the 1969 Code just restated the Canon of Ethics that existed for over eighty years.²⁷

Only in 1983, three years before *Roach v. Mead*,²⁸ the Model Code of Professional Conduct started to go through a revamp.²⁹ In *Roach*, the defendant’s partner, a lawyer at his firm, borrowed money from the client, failed to return it, and declared bankruptcy.³⁰ The defendant resigned from the bar three years prior to declaring bankruptcy.³¹ At the time of the case, a public opinion developed that lawyers were unethical and morally reprehensible.³²

By 1983, to change the perspective of lawyers and to bring the legal profession under a framework, the now-used Model Rules of Professional Conduct materialized after much consideration.³³ Another committee, the “Ethics 2000 Committee,” reworked the code after many revisions, discussions, and corrections between the years 2001 and 2003 until the ABA House of Delegates accepted most, but not all, of the commission’s recommendations.³⁴ Today, nearly every state in the United States has accepted some form or version of the Model Rules.³⁵ The authors argue that Model Rules are a plane that exists within the ambits of Natural Law and Legal Positivism, which is combined with an “inherent sense of justice.” This combination is essential to address the guidelines within which “zealousness” exists and is explained in detail in the following subheading.

25. *See id.* (explaining the discrepancies of the nine existing Canons).

26. *See id.* (outlining the approval process by the House of Delegates).

27. *See id.* (delineating the intricacies of the 1969 Code).

28. *Roach v. Mead*, 722 P.2d 1229 (Or. 1986).

29. *See* MODEL RULES OF PROF’L CONDUCT preface (discussing the changes made to the Code).

30. *See Roach*, 722 P.2d at 1231 n.1 (explaining defendant partner’s disciplinary hearings, alleged misrepresentation, forgery, and ultimate conviction for theft by deception).

31. *Id.* at 1231.

32. Walter A. Effross, Professor of Law, Lecture at U.S. Bus. L. (Feb. 16, 2023).

33. MODEL RULES OF PROF’L CONDUCT preface.

34. *See* LISA G. LERMAN & PHILIP G. SCHRAG, ETHICAL PROBLEMS IN THE PRACTICE OF LAW 35–36 (4th ed. 2022) (discussing the replacement of the old Code with the new rules).

35. *See Status of State Review of Professional Conduct Rules*, A.B.A., http://www.americanbar.org/content/dam/aba/administrative/professional_responsibility/ethics_2000_status_chart.authcheckdam.pdf [<https://perma.cc/7Y6Y-9URY>] (comparing the varying implementations of the Model Rules state by state).

III. THE CONFLUENCE BETWEEN NATURAL LAW, LEGAL POSITIVISM, THE “INHERENT SENSE OF JUSTICE” AND THE MODEL RULES OF PROFESSIONAL CONDUCT

Marcus Tullius Cicero stated “law as the highest reason, implanted in Nature, which commands what ought to be done and forbids the opposite. This reason, when firmly fixed and fully developed in the human mind, is law.”³⁶ Cicero further stated “that in obeying Natural Law, Man obeys a law which is both human and divine.”³⁷ He believed that “law was neither founded in nor born from human laws.”³⁸ For this reason, justice and the legitimacy of the *ius*³⁹ (the right) “[does] not depend on [its] argument with positive law, but rather on agreement with that *recta ratio divina*⁴⁰ [(the right reason)] which is the Natural Law.”⁴¹ However, the legal history of this world does contain a fusion of Natural Law and Human Law that arises from Legal Positivism. St. Thomas Aquinas stated human laws do have connection to natural law.⁴² He theorized those human laws whose contents are connected to the Natural Law “as conclusions from premises” (i.e., laws against theft, murder, adultery, etc.) carry an ethical and moral sense with them.⁴³ It is essential to mix the principles of this divine Natural Law with structural legal ethics. As Gandhi once said: “[A]ll the dry ethics of the world turn to dust because apart from God they are lifeless. Coming from God, they come with life in them. They become part of us and ennoble us. Conversely, God conceived without Goodness is without life.”⁴⁴ This

36. See Fernando H. Llano Alonso, *Cicero and Natural Law*, 98 ARCHIVES FOR PHIL. OF L. & SOC. PHIL. 157, 161 (2012) (quoting Cicero’s definition of the natural law (De Legibus, I, 6, 18)).

37. *Id.*

38. *Id.*

39. See *Ius*, LATINDICTIONARY.WIKIDOT.COM, <http://latindictionary.wikidot.com/noun:ius> [<https://perma.cc/KU78-H47W>] (defining *ius*).

40. See Alonso, *supra* note 36, at 159 (defining *recta ratio divina* as, “a law born from the right reason”).

41. *Id.* at 161–62.

42. See William S. Brewbaker III, *The Bible as A Law Book? Thomas Aquinas on the Juridical Uses of Scripture*, 12 RUTGERS J. L. & RELIGION 76, 81 (2010) (explaining Aquinas’ theory that rules set in place by authority figures are an essential element of human law and not merely incidental to the connection between human and natural law).

43. See *id.* at 84–85 (explaining Aquinas’ differentiation between “conclusions in premise” and “determinations”).

44. Mahatma Gandhi, *The Voice of Truth*, in THE SELECTED WORKS OF MAHATMA GANDHI 85 (Shriman Narayan ed., Navajivan Publishing House 1968) (ebook).

essentially creates a synthesis of Natural Law and the moral standards maintained in society.

Analyzing Legal Positivism—for the standard legal positivist “there is no general requirement that positive law (or law as it is posited) must satisfy certain minimal moral norms in order to be valid as law.”⁴⁵ Even though this might indicate notions of Natural Law (infused with moral values) and Legal Positivism are exclusive and separate theories according to Cicero and general legal positivists, the existence of common law in the United States is directly contrasted with this doctrine.⁴⁶ Common law is the opinion of judges that arises due to the basic sense of justice that every human being holds and is expressed in judgments and order.⁴⁷ Such opinions cannot arise without an inherent sense of morality and justice. Every legal judgment is a religious of Natural Law, Moral Values, and Legal Positivism.

The sense of justice maintained in a courthouse arises from Natural Law, the legal structure enacted by Legal Positivism and Morality. Oftentimes, judges must go beyond the framework of Legal Positivism and reach into ambits of Natural Law to deliver justice.⁴⁸ These so-called variations complement each other in the ground construction of the legal sphere.⁴⁹ In the authors’ opinion, this exchange of ideas—of Natural Law coalesced with the principles of morality and Legal Positivism—formed the structure of professional legal ethics practiced today by legal institutions in the United States. The authors believe this to be a bridge that complements both legal theories and general principles of morality. The Model Rules of Professional Conduct are not just an ideological synthesis of ethical dogma by enlightened jurists with a deep understanding of the role of a lawyer. Both Legal Positivism and “Moral” Natural Law gave rise to the Ethical Code practiced today around the world by all forms of legal jurisdictions.

45. Michael Baur, *Beyond Standard Legal Positivism and “Aggressive” Natural Law: Some Thoughts on Judge O’Scainnlain’s “Third Way,”* 79 *FORDHAM L. REV.* 1529, 1529 (2011).

46. See generally Alan B. Handler, *Judicial Jurisprudence*, *N.J. LAW.*, Oct. 2000, at 22, 25 (“The common law seeks a balance between stability and flexibility, consistency and change.”).

47. James Chen, *Common Law: What it is, How it’s Used, and How it Differs from Civil Law*, *INVESTOPEDIA* (May 20, 2022), <https://www.investopedia.com/terms/c/common-law.asp> [<https://perma.cc/4ZHT-JHGP>].

48. See George Anastaplo, *Legal Education, Economics, and Law School Governance: Explorations*, 46 *S.D. L. REV.* 102, 139 (“Critical to the Common Law is moral reasoning, or the attempt to apply natural law or the natural-right teaching to changing circumstances.”).

49. See David O. Brink, *Legal Positivism and Natural Law Reconsidered*, 68 *THE MONIST* 364, 364 (1985) (arguing for a reconciliation of legal positivism and natural law theory).

This amalgamation maintains the sense of rectitude and justice that every fundamental legal community considers deep-rooted in their identity and philosophy. Ronald Dworkin's Judge Hercules in his book *Law's Empire* is a "super-skilled jurist" who is capable of giving judgments in hard cases by constructing a theory of law "in its best light."⁵⁰ Profiling Judge Hercules with the legal theory put forth above, this fictional judge may dismiss Legal Positivism, Natural Law, and the general principles of morality when deciding "Hard Cases[;]" however, when it comes to debating cases involving legal ethics, Judge Hercules may have to consider all of the above.⁵¹ Because Dworkin synthesized "Legal Interpretivism,"⁵² the authors dissect this principle using the above example to state this inherent sense of justice that is critical to understand the spirit of ethics is but a confluence of Legal Positivism, Natural Law, and principles of morality.

Therefore, this inherent sense of justice exists within the proximity of rationality. Immanuel Kant states the supreme principle of morality is a principle of practical rationality.⁵³ He emphasized this concept is rational, even-handed, necessary, and unconditional and that we must follow it despite any natural desires we may have to the contrary.⁵⁴ This is fundamentally what the Model Rules attempt to address.⁵⁵ The Model Rules entomb this supreme principle of morality and rationality and keeps a tight rein on the conduct of the legal superstructure.⁵⁶ For example, Rule 1.5 stresses upon the "reasonableness" of charging your client.⁵⁷ This acts as a safeguard against any desire for a lawyer to collect an unreasonable amount of fees for the services rendered. Therefore, legal ethics is a marriage of

50. See generally RONALD DWORKIN, *LAW'S EMPIRE* (1986) (creating "an imaginary judge of superhuman intellectual power and patience who accepts law as integrity").

51. *Id.* at 240.

52. *Id.* at 239 (according to Dworkin, "there is no separation between Law and Morality"); see also Nicos Stavropoulos, *Legal Interpretivism*, STAN. ENCYC. PHIL. (Apr. 29, 2014), <http://plato.stanford.edu/archives/sum2014/entries/law-interpretivist/> [https://perma.cc/NR3E-XPFP] (describing Dworkin's work as it pertains to legal interpretivism).

53. Robert Johnson & Adam Cureton, *Kant's Moral Philosophy*, STAN. ENCYC. PHIL. (Jan. 21, 2022), <https://plato.stanford.edu/archives/fall2022/entries/kant-moral> [https://perma.cc/34S4-P3GW].

54. *Id.*

55. See MODEL RULES OF PROF'L CONDUCT scope ¶ 14 (explaining the purpose of the Model Rules is to provide guidance and disciplinary procedures for lawyers).

56. *Id.*

57. See *id.* R. 1.5 (disallowing lawyers to charge unreasonable fees and offering factors to determine the reasonableness of fees).

Natural Law, Legal Positivism, and an inherent sense of justice. This covers the concept of "Zealous Representation" as well, the boundaries of which are addressed in the subsequent subheadings.

IV. ON THE NOTE OF BEING COMPLETELY 'ONE' WITH THE CLIENT

William Simon strongly argues in his book *The Practice of Justice: A Theory of Lawyers' Ethics* that a lawyer should act as the bulwark of justice as opposed to being the zealous defenders of their clientele.⁵⁸ Simon argues the principles of confidentiality, the exploitation of a loophole, and the way a lawyer can take a procedural machinate should all come with a boundary.⁵⁹ Lawyers should zealously pursue justice through the medium of law over the zealous pursuit of fulfilling a client's desire through legal methods. The notion that lawyers are "Officers of Court" does not stop with the protection of the law, but also creates a causal link with ordinary morality.⁶⁰ This creates a duty or obligation owed to society generally and the upkeep of society's moral benchmarks. But where is the invisible line that separates these concepts? A lawyer must also beware of breaking contractual obligations that he may have to maintain when representing a client.⁶¹ He is but an agent of the client (the principal) and could be liable for a breach of that contract.⁶²

In fact, the New York County Lawyer Association (NYCLA) Opinion 730 expressly states that in the event of a conflict between zealous representation and the inadvertent disclosure of confidential information, the principle of client confidentiality trumps zealous representation.⁶³ As

58. See WILLIAM H. SIMON, *THE PRACTICE OF JUSTICE: A THEORY OF LAWYERS' ETHICS* 53 (1998) (discussing the change from the old Code to the Model Rules).

59. See *id.* at 12, 26, 163 (arguing for the importance of confidentiality and procedural safeguards).

60. Edward D. Re, *The Causes of Dissatisfaction with the Legal Profession*, 68 ST. JOHN'S L. REV. 84, 92 (1994).

61. See MODEL RULES OF PROF'L CONDUCT R. 1.5 (describing an attorney's scope of representation and requiring the attorney to abide by the client's decisions concerning the representation's goals).

62. *Id.*

63. See NYCLA Comm. on Prof'l Ethics, Formal Op. 730 (2002) (citing ABA Comm. on Prof'l Ethics & Grievances, Formal Op. 92-368 (1992)) (concluding lawyers have ethical obligations when receiving inadvertently disclosed privileged information); see also James M. Altman, *Respecting Someone*

Kant suggests, we must follow practical rationality in spite of our natural desires.⁶⁴ This practical rationality also encompasses a duty to abide by the Model Code. Furthermore, a lawyer arguably has an ethical duty to fulfill promises made to a client according to the previous obsolete version of the Model Code.⁶⁵ American Founding Father and second president, John Adams represented the British soldiers involved in the Boston Massacre.⁶⁶ Even though some viewed Adams's defense of these soldiers as morally wrong, he still defended them zealously.⁶⁷ It was practically right to defend the soldiers because every criminal deserves an argument made on their behalf until proven guilty.⁶⁸

However, such a zealous, ethical duty does come with its limits when representing a client. In *Florida Bar v. Kelner*,⁶⁹ the court noted, “[w]hile Kelner has a duty to zealously represent his clients, this duty does not require that he violate a court order and produce a mistrial.”⁷⁰ Therefore, a notion is created that a lawyer should maintain the hierarchy, acting as “Officers of the Court” first and a zealous defender of their client second. It is to be understood from the court’s opinion that every lawyer owes a moral duty toward the court and legal system that one intends to practice in, and every such lawyer must defend the system.⁷¹ This legal system co-exists within the complex web of society. Lawyers are all citizens of the society they live in, so they owe a duty to ensure the stability of societal order. This duty towards society need not always be expressed in the courtroom.⁷² A lawyer who dons the robes of justice owes a duty to his client and the legal system.⁷³

Else's Confidential Information, 84 N.Y. ST. B. ASS'N J. 20, 26 (2012) (discussing a lawyer's use of confidential information).

64. Johnson & Cureton, *supra* note 53.

65. See MODEL CODE OF PROF'L RESP. Canon 7 (AM. BAR. ASS'N 1908) (outlining a lawyer's duty to fulfill commitments).

66. See Terry Votel, *A Proud Tradition: Representing the "Unpopular Cause"*, 68 BENCH & B. MINN. 7, 7 (2011) (discussing John Adams and his representation of the Boston Massacre).

67. *Id.*

68. *Id.*

69. Fla. Bar v. Kelner, 670 So. 2d 62 (Fla. 1996).

70. *Id.* at 63.

71. *Id.* (approving referee's recommended discipline, including public reprimand).

72. See TEX. DISCIPLINARY RULES OF PROF'L CONDUCT preamble ¶ 4, *reprinted in* TEX. GOV'T CODE ANN., tit. 2, subtit. G, app. A (Tex. State Bar R. art. X, § 9) (“A lawyer's conduct should conform to the requirements of the law, both in professional service to clients and in the lawyer's business and personal affairs.”).

73. See MODEL RULES OF PROF'L CONDUCT R. 1.2 (explaining the client-lawyer relationship).

Once a lawyer integrates back into society, he can use his legal expertise to work toward maintaining order. This phenomenon is illustrated by the famous *Matson Slave Case*.⁷⁴

When Abraham Lincoln argued in the *Matson Slave Case*, spectators believed he did so half-heartedly.⁷⁵ Over the years, some Lincoln biographers have argued, citing statements from Lincoln’s colleagues, that Lincoln’s representation was less than zealous when he did not believe in a case.⁷⁶ Lincoln’s beliefs, even as a young lawyer in Illinois, circled around the concept of anti-slavery.⁷⁷ He fought all of his adult life advocating for the abolishment of slavery.⁷⁸ “He was an antislavery man and would have preferred to join Bryant’s side, but it was not possible.”⁷⁹ “Representing the slave owner, Matson, Lincoln’s ‘duty as a lawyer was to present his client’s case in an honest and forthright manner and let the court determine the justice of the client’s position.’”⁸⁰ He fulfilled his duty as a lawyer first and then went on to advocate toward the abolishment of slavery.⁸¹ This analysis sits right with the concept emphasized above—it is up to the judge to adjudge the client. So, in the normal order of things the separation at work here is that a lawyer remains an “Officer of the Court” first; zealous advocacy with its limitations comes second as part of the duty toward the profession; and finally, moral obligation takes place toward society. A lawyer should not be a zealot for zealous advocacy. Zealous advocacy does not mean that, as lawyers, we need to try and win at all costs. Keeping standards of professionalism and the fundamental duty toward society must be adhered to.

74. See generally Roger D. Billings, Jr., *Abraham Lincoln and the Duty of Zealous Representation: The Matson Slave Case*, 14 CONN. PUB. INT. L.J. 179 (2015) (describing the facts of the Matson Slave Case and Lincoln’s involvement).

75. See Don Comer, *Lincoln the Hedger: Was History’s Great President Also a Great Lawyer?*, OR. ST. B. BULL., Nov. 1994, at 9, 11 (suggesting Lincoln would throw cases he did not believe in).

76. See ALBERT WOLDMAN, *LAWYER LINCOLN* 260–61 (1936) (stating Lincoln’s arguments were unenthusiastic and weak in the *Bryant* case).

77. See Billings, Jr., *supra* note 74, at 206 (describing Lincoln’s tempered support for antislavery policies).

78. *Id.*

79. *Id.*

80. *Id.*

81. *Id.*

In an order highlighting the “proper” form of advocacy and the confluence that exists between ethics and morality, the Supreme Court of Florida in *The Florida Bar v. Buckle*⁸² stated:

The heart of this matter revolves around the lines of propriety involved in the conflict between zealous advocacy and ethical conduct. We must never permit a cloak of purported zealous advocacy to conceal unethical behavior. At the same time, we must also guard against hollow claims of ethical impropriety precluding proper advocacy for a client. This Court has recognized that “ethical problems may arise from conflicts between a lawyer’s responsibility to a client and the lawyer’s special obligations to society and the legal system. . . . ‘Such issues must be resolved through the exercise of sensitive professional and moral judgment guided by the basic principles underlying the rules.’”⁸³

The court goes on to further state that the meaning of the word “rules” in this context is “basic fairness, respect for others, human dignity, and upholding the quality of justice.”⁸⁴ This is a clear indication that a lawyer must not abuse the role of “Officers of the Court” and that a sense of moral duty and ethical standards must be dovetailed with the obligation toward a client.

Under Rule 1.1, a lawyer should be competent when representing a client.⁸⁵ Rule 1.3 requires a lawyer to act diligently and to be prompt and not neglect a legal matter.⁸⁶ Rule 1.6 requires a lawyer to maintain confidentiality relating to the representation of a client.⁸⁷ It is important to note that “[t]he rules are comprehensive, describing a lawyer’s duties not only to his clients, but also to others.”⁸⁸ Therefore, one must interpret the Model Rules to apply not only within the framework of the legal arena, but also in any role a lawyer takes in society. As much as the zealous duty toward the client is critical, this zealousness also extends to society. The language

82. *The Fla. Bar v. Buckle*, 771 So. 2d 1131 (Fla. 2000).

83. *Id.* at 1133–34 (quoting *Fla. Bar v. Machin*, 635 So. 2d 938, 940 (Fla. 1994) (citing the Preamble to the Rules of Professional Conduct)).

84. *Id.* at 1134.

85. MODEL RULES OF PROF'L CONDUCT R. 1.1.

86. *Id.* R. 1.3.

87. *Id.* R. 1.6.

88. Steve C. Briggs, *Colorado Bar Association President's Message to Members: The Myth and the Mischief of Zealous Advocacy*, 34 COLO. LAW. 33, 33 (2005).

of the Model Code with regard to zealous duty is not to be interpreted in a narrow or constructive way.⁸⁹ Zealousness, by definition, is broad and applies to all aspects of the court, client, and society.⁹⁰ The authors are of the opinion that there is a fundamental difference between being “zealous and ethical” as compared to being a “dedicated and staunch” supporter of one’s client.

V. THE CALL TO ZEALOUSLY GUARD THE REMUNERATION SUPERSTRUCTURE IN THE LEGAL INDUSTRY.

The current remuneration mechanisms in the United States were determined in the Supreme Court case of *Goldfarb v. Virginia State Bar*.⁹¹ This case abolished minimum fee schedules for determined remuneration in the legal practice.⁹² The court effectively determined that setting minimum fees was a form of price fixing in violation of antitrust laws.⁹³ Consequently, the billable hour standard was solidified as lawyers and clients accepted hour billing as the approach to determining legal fees.⁹⁴ However, an analysis of hourly billing practices in comparison to alternative or value billing and the ethical considerations of each illustrates a clear need for alternative bill strategies.⁹⁵ The objective of this academic inquiry is twofold: (1) facilitate greater transparency in legal fee charges and (2) ensure both lawyers and their clients have realistic expectations in all matter relating to representation, including costs, timing, case work performed, and the value that the attorney will provide.⁹⁶ Essentially, clients want to pay reasonable legal fees for quality services.

89. See MODEL RULES OF PROF’L CONDUCT R. 1.3 cmt. 1 (“A lawyer must also act with commitment and dedication to the interests of the client and with zeal . . .”).

90. *Zealous*, MERRIAM-WEBSTER DICTIONARY (2023), <https://www.merriam-webster.com/dictionary/zealous> [<https://perma.cc/ZK5X-RB4D>].

91. *Goldfarb v. Va. State Bar*, 421 U.S. 773 (1975).

92. See *id.* at 786 (explaining fixed pricing schemes for legal services that are integral to interstate an transaction that may substantially restrain interstate commerce, violating the Sherman Act).

93. *Id.* at 783.

94. *Id.*

95. Linda J. Ravdin & Kelly J. Capps, *Alternative Pricing of Legal Services in a Domestic Relations Practice: Choices and Ethical Considerations*, 33 LEGAL ETHICS: SOME CURRENT ISSUES IN THE PRAC. OF FAM. L. 387, 388 (1999).

96. See Andrea J. Paterson, *Fee Agreements: Structuring Alternative Fee Agreements to Enhance Recovery of Fees and Align Interests of Attorney and Clients*, 35 ADVOC. 10, 10 (2006) (discussing various alternative fee arrangements in litigation matters benefiting the client and attorney in both the settlement process and fee recovery).

Zealousness is but an alloy that should combine the considerations of legal order with both social order and clientele-safeguarding considerations. “Lawyers are the primary mechanism connecting the citizenry to the legal order.”⁹⁷ Clients come to lawyers to seek counsel for a range of issues ranging from advice for the ail or purchase of various commercial interests, the administration of estates, contract breaches from counter parties, to approaching the court system to seek damages for civil wrongs committed against them, etc. Fundamentally, much of legal practice requires both technical and tactical assistance informed by the spirit of public service; however, the pretense that legal practice remains above business has become more difficult to accept. It is in the lawyer’s best interest to invest as many work hours on the case as constructively possible. Conversely, it is in the client’s best interest that their legal matters are effectively resolved in the shortest time possible.

Remuneration can be defined as all forms of payment or benefit paid directly or indirectly by a relevant institution or individual in exchange for professional services and the legal profession is no different.⁹⁸ Any systemic endeavor to analyze the ethical dimensions of the remuneration of lawyers in contemporary legal practice requires an analysis of its current form because it is impossible to understand the ethical dimensions of a specific practice without understanding wider professional culture. Lawyers are guided by the Model Rules of Professional Conduct Rule 1.5 which stipulates “[a] lawyer shall not make an agreement for, change, or collect an unreasonable fee or an unreasonable amount for expenses.”⁹⁹ Thus, the following discussion examines the recurring tension between remuneration and legal ethics. The discussion assesses the basis of what is reasonable which forms the basis of determining an attorney’s compensation and turns its attention to the constraints that give rise to questions regarding remuneration and ethics.

Presently, the remuneration procedure in the United States is characterized by uncertainty and information asymmetry.¹⁰⁰ The ABA

97. Herbert M. Kritzer et al., *The Impact of Fee Arrangement on Lawyer Effort*, 19 LAW & SOC’Y REV. 251, 252 (1985).

98. *Remuneration*, MERRIAM-WEBSTER DICTIONARY (2013), <https://www.merriam-webster.com/dictionary/remuneration> [<https://perma.cc/CW5B-L59Q>].

99. MODEL RULES OF PROF’L CONDUCT R. 1.5.

100. See Silvia Hodges, *But We Don’t “Do” Marketing*, 82 N.Y. STATE B.J. 26, 28 (2010) (“Over the past 25 years, the legal market has matured from a relatively inefficient market with great asymmetry

struggled considerably in consolidating a remuneration order; the most commonly used measure of remuneration is the hourly rate.¹⁰¹ Considering this, the inequalities of remuneration of lawyers raises serious ethical questions. In ethical terms, the wider question on the justification of minimum remuneration standards in the legal profession is the substantial pay differences which needs to be tackled. The justification for minimum standard of remuneration will allow lawyers to ensure that clients’ interests and professional development remain their primary concern as opposed to the pursuit of pay. This does not mean that clients are guaranteed to be charged less fees for services; rather, the overall objective is for the remuneration practices to foster transparency and predictability resulting in added value for the representation.¹⁰² The ability of a lawyer to provide intelligent and vigorous advocacy is further facilitated when their financial needs are met. From an ethical perspective, the fees must be directly proportional to the task at hand.

A remuneration order typically uses a predetermined benchmark to appraise the amount a lawyer is to be paid in terms of their fees.¹⁰³ Lawyers consider several factors when billing for services rendered: legal research, drafting of documents, pleadings, court appearance, disbursements, etc.¹⁰⁴ For lawyers to remain guided by the tradition of ethics, they must move away from acts that wage war against professional virtues, such as undercutting. Underlying justifications for undercutting are rooted in the notion of a free market; however, the legal profession is a practice that should be guided by advancing the clients’ interests. Setting minimum standards of remuneration will ensure less undercutting, which will in turn ensure that practicing professionals do not undercut. Lawyers are not immune to the external economic dynamics that undercutting causes, such as creating predatory legal culture where lawyers look to poach clients. In so doing, lawyers create distrust between each other, eroding legal practice

of information and little information regarding price, quality or efficiency of service to an increasingly robust and efficient market with lots of information and sophisticated clients.”).

101. *Fees and Expenses*, A.B.A. (Dec. 3, 2020), https://www.americanbar.org/groups/legal_services/milvets/aba_home_front/information_center/working_with_lawyer/fees_and_expenses/ [https://perma.cc/P8VG-UYAG].

102. See Jerome Crawford & Erika L. Davis, *Show Me the Bill: Alternatives to the Hourly Rate*, 96 MICH. BAR J. 40, 41 (June 2017) (explaining alternative fee arrangements).

103. *Consumer Pamphlet: Attorneys’ Fees*, FLA. BAR (Aug. 2018), <https://www.floridabar.org/public/consumer/pamphlet003/> [https://perma.cc/4M7S-BRZZ].

104. *Id.*

comradery. This, in turn, can result in pressure on lawyers to make fraudulent representations to retain or poach a client. In the end, this hurts the client and hurts the image of the legal profession in society's eyes while fostering distrust and negative competition between lawyers.¹⁰⁵ This illustrates how far profession ideology has shifted from its ethical underpinnings and can be readily exploited by unethical lawyers.

Ethics also serve to safeguard the interest of the client in their representation by ensuring that they are not overcharged. This discussion does not argue that the billable hour is the sole reason for the fee issues that plague the legal profession; rather, it argues the billable hour is a contributing factor. The disparities in the legal costs are amplified when clients pay for "aggressive time recording, which is especially unfortunate because they have no ability to determine if the high monthly bills truly reflect the value of the services they received."¹⁰⁶ Additionally, the billable hour is not ideal for the client due to the unpredictable and often high price tag that comes with it.¹⁰⁷ "In 2001, the ABA asserted that too much emphasis was being placed by firms on billable hour requirements, which was leading to bill padding and general inefficiency, as well as damaging firm culture."¹⁰⁸ A remuneration order has the potential to provide a standardized way of calculating time that is used throughout the legal industry. Zealousness is not protecting the financial interest of the client; it is about protecting the so called "lawyer community." Even lawyers need to get paid. One must not identify completely with a client as it has the risk of conflating a zealot with being zealous. It is best to balance interests between the lawyer community, the client, and the profession are key.

VI. THE LAW OF AGENCY V. ZEALOUS "ZEALOT" REPRESENTATION

The law of agency holds a better standard or, at the very least, can act as complementing factor to define the limits of zealous representation. Agency law may also hold the key to bringing about the "inherent sense of justice"

105. Amanda Pilon, *The Billable Hour: Critiques of the System and Two Potential Solutions*, 15 U. ST. THOMAS J. L. & PUB. POL'Y 852, 861, 864–65 (April 2022).

106. *Id.* at 865.

107. *A Short History of the Billable Hour and the Consequences of its Tyranny*, LAW PEOPLE (June 2007), <https://www.lawpeopleblog.com/2007/06/a-short-history-of-the-billable-hour-and-the-consequences-of-its-tyranny/> [<https://perma.cc/P89P-SALA>].

108. Sylvia Stevens, *Whither Zeal? Defining 'Zealous Representation'*, OR. ST. B. BULL., July 2005.

principle that is fundamental to high judicial ethical standards.¹⁰⁹ The Law of Agency identifies three characters: (1) a principal who wants the fulfillment of a service, (2) an agent who acts on behalf of the principal, and (3) the third party who receives the service.¹¹⁰ The relationship between a lawyer and a client is that of an “agent” and “principal” respectively.¹¹¹ In order to be a zealous advocate, a lawyer does not have to identify with or even agree with the client’s goals. That has never been in a lawyer’s job description. An attorney–client relationship is one of the agencies in which two independent and different people come together for the fulfillment of a common interest.¹¹² Just as an agent is not required to do anything and everything a principal requests, the role of an agent is consistent with the role of an advisor.¹¹³ “Too much identification with the client may cause the lawyer to be a zealot instead of zealous.”¹¹⁴ Therefore, the authors are of the opinion that the delineation that exists within the principle of zealous representation is the ability to actually act with “zealousness” and not with “zealot-ness.”

As emphasized in the previous section as well as in the current section, zealous representation is not without its limits. In fact, this concept would only lead to setting bad precedents of improper usage of this ambiguous term. Zealous representation without a boundary or a framework is particularly dangerous. The Court of Special Appeals in Maryland opined in *Little v. Duncan*¹¹⁵ that, “zeal in advocacy is commendable, but zeal, even in advocacy, without bounds may be contemptuous and disruptive. Zeal is very blind, or badly regulated, when it encroaches upon the rights of others.”¹¹⁶ This “commandment” holds true for all compartments of the legal ziggurat, i.e. attorneys, courts, and law firms. Law firms have the duty

109. *Agency*, CORNELL L. SCH. (June 2022), <https://www.law.cornell.edu/wex/agency> [<https://perma.cc/DL6X-NVTN>].

110. Grace M. Giesel, *Client Responsibility for Lawyer Conduct: Examining the Agency Nature of the Lawyer-Client Relationship*, 86 NEB. L. REV. 346, 347 (2007).

111. Stevens, *supra* note 108.

112. *Id.*

113. *Id.*

114. *Id.*

115. *Little v. Duncan*, 284 A.2d 641, 644 (Md. Ct. Spec. App. 1971).

116. *Id.* at 644 (quoting PASQUIER QUESNEL, REFLEXIONES MORALES SUR LE NOUVEAU TESTAMENT (1687)).

to implement the code of ethics in their partnership agreements.¹¹⁷ The partnership memorandum is not only responsible for the zealous representation of its clients, but also for protecting the interest of its business. It serves an essential duty by requiring firm members to maintain ethical standards and to be zealous when dealing with the general public, its employees, and partners.

As an agent for a principal, a law firm should always strive to maintain the highest ethical standards. The operation of law firm cannot supersede the Model Rules. An attorney or law firm must always adhere to the Model Rules of Professional Conduct.¹¹⁸ Therefore, the law of partnerships arising through agency law will not triumph, but rather complement the Model Rules. On that note, it is especially important to understand the dissent of Chief Justice Phillips and Justice Spector of the Supreme Court of Texas in *Bohatch v. Butler & Binion*.¹¹⁹

[I] believe that the fiduciary relationship among law partners should incorporate the rules of the profession promulgated by this Court. *See Central Educ. Agency*, 783 S.W.2d at 202 (noting that employment contracts incorporate existing law). Although the evidence put on by Bohatch is by no means conclusive, applying the proper presumption of no-evidence review, this trial testimony amounts to some evidence that Bohatch made a good-faith report of suspected overbilling in an effort to comply with her professional duty. Further, it provides some evidence that the partners of Butler & Binion began a retaliatory course of action *before* any investigation of the allegation had begun.¹²⁰

In summary, legal statutes should look to complement the Model Rules. Fyodor Dostoyevsky's fictional characters like Raskolnikov might disagree, as they are entombed with the idea that the greatest good is usually achieved

117. *See* MODEL RULES OF PROF'L CONDUCT R. 5.1. (explaining the ethical conduct to which lawyers must abide by).

118. *See* MODEL CODE OF PROF'L RESP. preliminary statement ¶ 2 (AM. BAR ASS'N 1981) (stating the Model Rules "define the type of ethical conduct that the public has a right to expect not only of lawyers but also of their non-professional employees and associates in all matters pertaining to professional employment").

119. *Bohatch v. Butler & Binion*, 977 S.W.2d 543 (Tex. 1998).

120. *Id.* at 561 (Spector, J., dissenting).

for the most significant number of people.¹²¹ In this case, other senior partners were irked by Bohatch’s good faith actions, so the law firm had to fire Bohatch because it was for the greater good of the firm—to maintain peace in light of anarchy.¹²² However, the authors endorse Aristotle’s view of ethics here. Aristotle proclaimed that man is a “political animal,” and that the “law should look to inculcate the virtues of character.”¹²³ He believed the law must include this virtue of character in coordination with all parts of the social fabric, which includes household and social customs.¹²⁴ The authors argue this covers a “law firm” as well.

Interpreting the above case in light of the arguments emphasized above, the law firm should have appreciated the “due diligence” taken by Bohatch to maintain the virtuous character of the law firm. Therefore, even if the law firm acted for the ‘greater good’ like Raskolnikov, a good faith activity that seeks to maintain ethical virtues of character should never be penalized. Lawyers owe a higher form of duty not only to their law firms and clients, but also to the general public. The dissent in *Bohatch* had a combination of Natural Law and Legal Positivism merged with the most basic and fundamental forms of morality.¹²⁵ The dissent also allocates a statute—the status of a “companion” to the Model Rules—and allows it to accompany all human-made laws to maintain the sense of justice in the community.

VII. OF SOCIETY AND HONOR: CONCLUSION

A lawyer has a duty to balance his duty of zealous representation of his client while maintaining the honor of the legal profession as well. This honor transcends to the general public and the legal system that one ought to practice. In an article from 1995, John Edington laid down some of the

121. Ginna Wilkerson, *Dostoyevsky’s Views on Utilitarianism*, STUDY.COM (Mar. 9, 2022), <https://study.com/academy/lesson/dostoyevskys-view-on-utilitarianism.html#:~:text=Fyodor%20Dostoyevsky,-Fyodor%20Dostoyevsky%20was&text=Morality%2C%20for%20many%20of%20Dostoyevsky’s,to%20produce%20the%20greater%20good> [https://perma.cc/KU76-KC9Y].

122. See *Bohatch*, 977 S.W.2d at 545 (plurality opinion) (showing irreparable friction caused by one lawyer’s reports of another lawyer’s suspected overbilling may prove detrimental to both the firm’s existence and the firm clients).

123. Darren Weirmick, *Law in Aristotle’s Ethical-Political Thought* (May 1998) (Ph.D. dissertation, Rice University) (on file with author).

124. *Id.*

125. See *Bohatch*, 977 S.W.2d at 560 (Spector, J., dissenting) (referencing natural consequences).

ground rules that are contingent on zealous representation.¹²⁶ The duty of adhering to strict truthfulness and avoiding deception (Rule 3.3),¹²⁷ using the legal forum and process for legitimate means (Rule 3.1),¹²⁸ respecting the forum as an officer of the court (Rule 3.5),¹²⁹ duty not to abet fraud and misconduct (Rule 3.3(a)(2), 3.3(c), and 3.4(b)),¹³⁰ duty not to engage in conspiracy or collusive conduct that benefits the lawyer or the client (Rule 3.3, 3.4, and 3.5),¹³¹ duty not to assert frivolous claims or defenses (Rule 3.1),¹³² duty to expedite litigation (Rule 3.2),¹³³ a duty of fairness to opposing counsel and not to make untruthful statements to third parties (Rule 3.4 and 4.1),¹³⁴ a duty not to use false and misleading evidence and misinformation (Rule 3.4),¹³⁵ and to show candor to the tribunal (Rule 3.3(a)).¹³⁶

Using agency law as a benchmark of reference, the authors opine that all legal statutes, both federal and state, must complement the ABA Model Rules. A lawyer need not identify himself with the client but should rather identify himself with the legal profession. Every lawyer ostensibly plays a major role in all parts of the social fabric and must maintain such dignity, honor, and character when practicing law and when representing zealously. Virtues of character like honesty, fairness, self-control, and prudence should be inculcated in all law schools around the world.

Therefore, the legal community must embody the principles of Natural Law, Legal Positivism, Morality, and the inherent sense of justice that we all have in us. Virtue of character can find itself in law and in the legal system when the Model Rules are upheld using all the principles stated above.

126. John A. Edginton, *Ethics at Sea: Ethics Issues for Maritime Lawyers and Insurers*, 70 TUL. L. REV. 415, 456–57 (1995).

127. MODEL RULES OF PROF'L CONDUCT R. 3.3.

128. *Id.* R. 3.1.

129. *Id.* R. 3.5.

130. *Id.* R. 3.3(a)(2), 3.3(c), 3.4(b).

131. *Id.* R. 3.3, 3.4(a), 3.5.

132. *Id.* R. 3.1.

133. *Id.* R. 3.2.

134. *Id.* R. 3.4(f), 4.1.

135. *Id.* R. 3.4(b).

136. *Id.* R. 3.3(a); *see also* Edginton, *supra* note 126, at 456–57 (discussing ethics in the practice of law); *see also* Lizabeth L. Burrell, *Between Scylla and Charybdis: The Importance of Internal Calibration in Balancing Zeal for One's Client with Duties to the Legal System When Your Adversary is Incompetent*, 23 U.S.F. MAR. L.J. 265, 275 (2010) (discussing the importance of ethics when balancing zeal).

