

Professional Responsibility

I) Foundations of Professional Responsibility

- a) Malpractice v. Discipline
 - i) Malpractice—attorney's actions were below the standard of care exercised by people in his field.
 - (1) Purpose—compensate plaintiff
 - (2) Action in a civil court
 - ii) Discipline—expert testimony to prove attorney deviated from the Model Rules.
 - (1) Not automatically malpractice but can help prove.
 - (2) Purpose—punish lawyer
 - (a) Disciplinary actions are published in NY Law journal
 - (3) Action in a tribunal
- b) Resolving Tensions in the Lawyer's Role
 - i) Zealous Advocate ⇒ lawyers are ethically and professional responsible for acting loyally and advocating zealously on client's behalf.
 - ii) Officer of the Court ⇒ lawyers are human beings with strongly held personal beliefs regarding morality.
 - iii) Ethical Systems Influencing a Lawyer:
 - (1) Personal ethics
 - (2) Organization culture and ethics of the firm
 - (3) Culture and ethics of the profession itself (Model Rules)
 - (4) Ethics of the justice system
 - (5) Ethics of adversaries
 - (6) Ethics of the person or entity to be served (client)
- c) Professionalism
 - i) Definitions:
 - (1) Certain behaviors that are, at a minimum, to be expected of people of the occupation.
 - (2) Special skills are required because clients have no idea what they are doing.
 - (3) "Special expertise and ethical responsibilities" ABA Commission on Professionalism
 - (4) "An occupation whose members have special privileges, such as exclusive licensing [monopoly] justified by these assumptions, that:
 - (a) Practice requires substantial intellectual training and use of complex judgments;
 - (b) Client trust based on inability to evaluate adequately the quality of service;
 - (c) Client's trust presupposes that the practitioner's self-interest is overbalanced by devotion to serving both client's interest and public good; and
 - (d) That the occupation is self-regulating.
 - ii) NY CPLR § 214(6)—3 year statute of limitations for malpractice case against professionals, but in medical malpractice limit is 2 ½ years. Breach of contract is 6 years.

Professional Responsibility Notenotes

AW Rasmussen



Professional Responsibility Notes:

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