

LAW REVIEW AUTHORS AND PROFESSIONAL RESPONSIBILITY: A PROPOSAL FOR ARTICULATED STANDARDS

*Robert M. Jarvis**

Numerous articles over the years have implored the staffs of the nation's law reviews to act with greater professionalism and to become more aware of their ethical duties and obligations.¹ No articles, however, appear to have focused on the ethical duties and obligations of law review authors.

The lack of commentary on this subject is somewhat surprising in light of the fundamental role that law review articles play in shaping the law.² Perhaps the failure to examine the subject is due to the belief that all law review authors already understand their responsibilities. To a certain extent, such an understanding undoubtedly exists. Although largely unexpressed,

* Assistant Professor of Law, Nova University. B.A., Northwestern University; J.D., University of Pennsylvania; LL.M., New York University. The author wishes to thank Professor Phyllis G. Coleman of the Nova University Law Center for her invaluable assistance and encouragement in the preparation of this Article. Prior to its publication, this Article was delivered as part of a program on law reviews and ethics at the 1989 National Conference of Law Reviews held in Toledo, Ohio.

1. See, e.g., Boyle, *Dumping on Law Reviews*, CLS, May 1987, at 17; Cane, *The Role of Law Review in Legal Education*, 31 J. LEGAL EDUC. 215 (1981); Closen, *A Proposed Code of Professional Responsibility for Law Reviews*, 63 NOTRE DAME L. REV. 55 (1988); Cramton, "The Most Remarkable Institution": *The American Law Review*, 36 J. LEGAL EDUC. 1 (1986); Dekanal, *Faculty-Edited Law Reviews: Should the Law Schools Join the Rest of Academe?*, 57 UMKC L. REV. 233 (1989); Douglas, *Law Reviews and Full Disclosure*, 40 WASH. L. REV. 227 (1965); Mewett, *Reviewing the Law Reviews*, 8 J. LEGAL EDUC. 188 (1955); Murray, *Publish and Perish—By Suffocation*, 27 J. LEGAL EDUC. 566 (1975); Posner, *Goodbye to the Bluebook*, 53 U. CHI. L. REV. 1343 (1986); Rodell, *Goodbye to Law Reviews*, 23 VA. L. REV. 38 (1936); Rosenkranz, *Law Review's Empire*, 39 HASTINGS L.J. 859 (1988); Rotunda, *Law Reviews—The Extreme Centrist Position*, 62 IND. L.J. 1 (1986); Comment, *Plagiarism in Legal Scholarship*, 15 U. TOL. L. REV. 233 (1983).

2. See Burke, *Introduction*, 1 LOY. L.A.L. REV. 1 (1968); Closen, *supra* note 1; Douglas, *supra* note 1; Edmunds, *Hail to Law Reviews*, 1 JOHN MARSHALL J. PRAC. & PROC. 1 (1967); Hoffman, *Law Reviews and the Bench*, 51 NW. U.L. REV. 17 (1956); Jones, *In Praise of Student-Edited Law Reviews: A Reply to Professor Dekanal*, 57 UMKC L. REV. 241 (1989); Mann, *The Use of Legal Periodicals by Courts and Journals*, 26 JURIMETRICS J. 400 (1986); O'Neill, *Dedication Letter*, 1 CAP. U.L. REV. (vii) (1972); Rosenkranz, *supra* note 1; Swygert & Bruce, *The Historical Origins, Founding, and Early Development of Student-Edited Law Reviews*, 36 HASTINGS L.J. 739 (1985); Traynor, *To the Right Honorable Law Reviews*, 10 UCLA L. REV. 3 (1962); Warren, *Upon the Tenth Anniversary of the UCLA Law Review*, 10 UCLA L. REV. 1 (1962); Warren, *Messages of Greeting to the U.C.L.A. Law Review*, 1 UCLA L. REV. 1 (1953); Denver Law Journal Survey, *The Law Review—Is It Meeting the Needs of the Legal Community?*, 44 DENVER L.J. 426 (1967).

there probably is universal agreement that law review authors must submit only original work of their own creation, must fully and faithfully attribute all work that is not their own, and must not distort other materials, whether of a primary or secondary nature, in order to prove or support their own conclusions. Beyond these three obligations, however, it is unclear whether law review authors have any other duties. Moreover, if other responsibilities do exist, it is unclear to whom they are owed.

Given the importance of law review articles on the one hand, and the lack of articulated standards for their production on the other hand, it seems that there is a need for written rules that will guide law review authors. Accordingly, the present author has devised a set of model rules for law review authors. In constructing these rules, the ABA Model Rules of Professional Conduct have been used as a guide.³

The proposed set of rules begins with a preamble, a statement of application, and a list of definitions. This is followed by nineteen rules, which are divided into three sections. These sections correspond to the three groups to whom, in the present author's opinion, law review authors owe specific obligations: the law reviews themselves, the legal profession (consisting of judges, practitioners, and scholars), and the public at large. The duties owed to these populations are quite different, since the populations themselves are very different and their use of law review articles is very different.⁴ Each rule is followed by one or more comments, which explain the purpose and operation of the rule.

The rules set out in the following pages are simply a first attempt to articulate the duties of law review authors. As Professor Michael L. Closen has written in a related context, one observer alone cannot hope to develop a complete set of rules.⁵ Thus, these rules are meant in large part to provoke thought and encourage discussion.

MODEL RULES OF PROFESSIONAL CONDUCT FOR LAW REVIEW AUTHORS

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3. MODEL RULES OF PROFESSIONAL CONDUCT (1983).

4. Judges, for example, use law review articles when looking for solutions to novel problems. Practitioners use law review articles in conducting the research necessary to construct briefs and memoranda. Scholars use law review articles as foundations for their own articles. Legislators use law review articles as prods or supports for new legislation. As a result of these uses, society as a whole has been inexorably altered. Ellis, *Student-Edited and Faculty-Edited Journals in the Marketplace of Legal Ideas: A Reply to Professor DeKanal*, 57 UMKC L. Rev. 246, 246 (1989).

5. Closen, *supra* note 1, at 62.

OBLIGATIONS TO THE LAW REVIEW**RULE 1.1 Originality****RULE 1.2 Contribution to the Law****RULE 1.3 Consistency of Positions in Different Works by the Same Author****RULE 1.4 Single Publication of the Same Work****RULE 1.5 Dealings with Members of the Law Review Staff****OBLIGATIONS TO THE LEGAL PROFESSION****RULE 2.1 Competence****RULE 2.2 Diligence****RULE 2.3 Procedures Used to Produce a Work****RULE 2.4 Attribution****RULE 2.5 Verification of Sources****RULE 2.6 Distortion of Sources****RULE 2.7 Contradictory Authorities****RULE 2.8 Conflict of Interest****RULE 2.9 Undue Credit****OBLIGATIONS TO THE PUBLIC****RULE 3.1 Prohibited Works****RULE 3.2 Works That Express Unpopular Ideas****RULE 3.3 Confidential Information****RULE 3.4 Correction of Mistaken Impressions****RULE 3.5 Reporting Professional Misconduct***Preamble: A Law Review Author's Responsibilities*

[1] A law review author does not write in a vacuum. A law review author has the potential to stimulate critical thinking, provoke sharp debate, and, through the use of the courts' adoption of the work produced, change the course of life and liberty. As such, a law review author holds a special place of trust in the legal system and in society.

[2] A law review author performs various functions. As a synthesizer of the law, a law review author provides an overview of the law and details growth and change in the law. As a commentator on the law, a law review author introduces ideas on which others may reflect. As a critic of the law, a law review author challenges the past and current state of the law in order that changes may be made that will improve the law, thereby securing greater justice in society.

[3] In all actions, a law review author should be competent, prompt, and diligent. A law review author should maintain communication with such persons as are specified by the Rules of Professional Conduct. A law review author should keep in confidence information relating to third persons as stated in the Rules of Professional Conduct.

[4] A law review author's conduct should conform to the requirements of the law. A law review author should use law reviews only for legitimate purposes. A law review author should demonstrate respect for the legal system and seek to uphold legal process. At the same time, a law review author should seek to inform others so that the legal system can be improved.

[5] Law review authors play a vital role in the preservation of society. The fulfillment of this role requires an understanding by law review authors of their relationship to our legal system. The Rules of Professional Conduct, when properly applied, serve to define that relationship.

Scope

[1] The Rules of Professional Conduct are rules of reason. They should be interpreted with reference to the purposes of law reviews and of the law itself. In addition to the Rules, there are Comments that are designed to explain the purpose and demonstrate the use of the Rules. The Comments are meant as illustrations, and are not to be taken as exclusive applications of a given Rule.

[2] The Rules presuppose a larger legal context shaping the law review author's role. That context, whose outer boundaries are society and whose inner boundaries are the law, consists of many factors. The Rules do not exhaust the moral and ethical considerations that should inform a law review author's obligations, since no code or set of proscriptions can ever completely guide or regulate human activity. Thus, the Rules are meant to provide a framework on which to build.

[3] Failure to follow the Rules is a basis for invoking the Rules. Such invocation can take many forms, from mere private disapproval to public reporting of an incident to the law review author's employer and, if applicable, any regulatory board that has licensing control over the law review author as well as any professional societies or associations to which the law review author belongs. The severity of the punishment depends upon an assessment of all of the relevant circumstances, including the willfulness and seriousness of the violation, the existence of extenuating factors, the harm caused, and the existence of a past history of violations. These Rules do not in any manner affect the operation of public laws, such as the law of libel.

Terminology

[1] "Author" or "Law Review Author" denotes the author of any work, regardless of whether the individual holds a J.D. degree or its equivalent.

[2] "Authority" denotes any material that bears on a work.

[3] "Law Review" denotes a law-related publication, edited either by law students, law faculty, or both, which appears at least once each calendar year in a permanent form and which has as its mission the scholarly presentation of legal issues, ideas, or developments on one or more subjects.

[4] "Law Review Staff" denotes any member of a law review, including

the Editor-in-Chief, Senior Editors, Junior Editors, and Candidates for Editor, as well as clerical and printing personnel.

[5] "Production" denotes the process of creating a finished work. This term embraces all phases of creation, including idea development, research, writing, acceptance of the work for publication, editing, proofreading, printing, distribution, and cataloging.

[6] "Reader" denotes any individual, whether natural or corporate in form, who reads, sees, hears of, uses, relies on, cites, or otherwise comes into contact with a work.

[7] "Source" denotes any material relied on by a law review author in the production of a work.

[8] "Work" denotes any address, article, comment, essay, note, speech, or survey, regardless of source or authorship, which either does appear or is intended to appear, in whole or in part, in a law review.

Obligations to the Law Review

RULE 1.1 Originality

An author shall produce only original works.

COMMENT:

[1] The most basic obligation of a law review author is to produce works through the use of the law review author's own talents, skills, knowledge, creativity, mental processes, research, and time. Thus, a work that is not the product of a law review author's own efforts is not an original work.

[2] Consistent with the Rules of Professional Conduct, particularly Rules 1.2, 1.4, 2.4, 2.9, and 3.3, the limited use of other sources, if proper credit is given, does not make an otherwise original work into one that is not original.

RULE 1.2 Contribution to the Law

An author shall produce only such works as will make a contribution to an improved understanding of the law and its process.

COMMENT:

[1] A work must make a contribution to the law. Only in this way can the law grow and society be improved.

[2] A work need not make a contribution to all aspects of the law. Such a standard would be impossible to meet. Judged in its own area of the law, however, a work should provide fresh insight. While determining whether a given work provides fresh insight can be difficult, the test should generally be one of novelty. To be novel, however, the work need not break new ground nor take a radical position. Rather, the work should be considered novel if it advances legal knowledge or aids in an understanding of the substantive or procedural aspects of the law.

RULE 1.3 Consistency of Positions in Different Works by the Same Author

An author shall not take inconsistent positions in different works unless such inconsistencies are explained.

COMMENT:

[1] Many law review authors write multiple works. Some, such as law professors, produce many works in the course of their lifetimes. Authors of multiple works should attempt to harmonize their writings in order that the law may develop in a cohesive manner and avoid fractures that will retard its growth.

[2] A law review author may, where appropriate, engage in the role of "devil's advocate." Such role playing can help the law to develop by forcing critical examinations of settled areas of law and shaping the contours of emerging areas of law. If such role playing is undertaken, the law review author should clearly indicate the same.

[3] A law review author should on occasion re-evaluate previous works prepared by the law review author. Where such a re-evaluation convinces the law review author that an earlier work is no longer correct, the law review author is free to contradict or even repudiate the earlier work in a later work.

RULE 1.4 Single Publication of the Same Work

An author shall not have the same work appear in more than one publication unless the express permission of both the original publication and the subsequent publication is secured and the reader is informed by the author of the original publication's existence.

COMMENT:

[1] A law review author's work should appear in only one publication.

[2] Where the express consent of both the original and the subsequent publication is secured, the same work may appear in two different publications provided that the republication carries an appropriate notation.

[3] Nothing in this Rule prevents an earlier work from serving as the basis of an expanded or abridged subsequent writing. In such circumstances, the permission of the first publication should be secured. Failure to do so, however, is not a violation of the Rules of Professional Conduct unless the expansion or abridgement entails no more than a minor revision of the first work.

RULE 1.5 Dealings with Members of the Law Review Staff

An author shall act fairly in all dealings with members of the Law Review Staff. An author shall not take advantage of any official or unofficial position that the author may hold.

COMMENT:

[1] In the relationship between law review author and law review mem-

ber, there may be times when the law review author is in a position to take advantage of the law review member by misleading the member or exerting undue influence. This is particularly true where the law review author is on the faculty of the law school of which the law review member is a student.

[2] Instances in which a law review author may come to have the opportunity to mislead or exert undue influence on a law review member are so numerous that it is impossible to catalogue all of them. The most blatant example, however, is where the law review author conditions the awarding of a grade or the giving of a recommendation on the law review's acceptance of a work for publication. Another example is a law review author's premeditated decision to have law review staff members extensively revise a work due to the law review author's knowing failure to properly prepare the work prior to its submission to the law review. A third example is a law review author's use of threats against the law review member, especially where such threats imply that the member's law school record will be damaged. In certain circumstances, sexual liaisons with a staff member may also provide opportunities for a law review author to violate this Rule.

[3] The duty of fair dealing can arise in any number of contexts during the production process. Thus, for example, a law review author may not use an offer of publication by one law review to pressure or otherwise induce another law review to extend an offer of publication. Similarly, a law review author may not withdraw a work from a law review in order to have it published in a different law review. Of course, where the law review has misled the law review author with respect to the timing of publication or the nature or extent of changes which are to be made in the work prior to publication, a law review author may have sufficient grounds to withdraw a work from a law review.

Obligations to the Legal Profession

RULE 2.1 Competence

An author shall produce works only if competent to do so.

COMMENT:

[1] A law review author should produce works only in those areas in which the law review author's knowledge permits the production of works. Strict adherence to this Rule is necessary if law reviews are to remain a reliable source of information. If law reviews fail to remain a trustworthy guide to the law, their ability to play a role in the law's growth will be severely diminished.

[2] A law review author can be qualified to produce a work in a given field through specialized learning, training, or experience. Where the law review author does not possess such attributes, the law review author may nevertheless produce a work without violating this Rule by either associating with a co-author who is competent in the subject or by taking specific steps to become knowledgeable about the field prior to producing the work.

RULE 2.2 Diligence

An author shall produce works with reasonable diligence and care.

COMMENT:

[1] Consistent with Rule 2.1, a law review author must produce works with such diligence and care as are warranted by the circumstances.

[2] The level of skill that must be employed in a given work depends upon a large number of circumstances, including the length of the work, the reputation of the law review author, the prominence in placement given to the work in the law review, the novelty of the work, and the ultimate audience and purposes for which the work was produced. Thus, a law review author need not "hit a homerun" each time out; by the same token, a law review author has an obligation to try for at least a "clean single."

RULE 2.3 Procedures Used to Produce a Work

An author shall reveal the procedures used in producing a given work.

COMMENT:

[1] A law review author must reveal publicly, as part of the work itself, whatever procedures were employed in the production of the work. Thus, for example, if a law review author produces a work that surveys a given area of the law, it may be that the law review author's research assistant was entrusted with the task of making the initial selection of cases by deciding which cases to exclude. In such a situation, it is misleading not to reveal this information. Without an understanding of how the cases were selected, the reader of the work might believe that the law review author had personally reviewed each case in the subject area.

[2] Similarly, it may be that in a given set of circumstances, the law review author relies upon written case summaries prepared by the law review author's research assistant. While the summaries may be both succinct and accurate, it would once again be misleading for the law review author not to disclose the fact that the work is based on such summaries.

[3] Similarly, a law review author may delegate to a law review staff tasks that go beyond the normal responsibilities of proofreading and editing. The law review author may, for example, ask the law review staff to prepare an update of the work, or convert the work from one form (such as a speech) to another form (such as an article). In addition to observing the strictures of Rule 1.5, the law review author also must indicate the ways in which the work has been altered by the law review staff.

[4] The operation of this Rule will often work in close conjunction with Rule 2.9.

RULE 2.4 Attribution

An author shall attribute all material that is not original.

COMMENT:

[1] A law review author will often rely on ideas that are the creation of someone else. In the abstract, such reliance is not only proper but actually necessary, since the law is a set of building blocks that is constantly being used to fashion new ideas. Thus, reliance on the ideas of others is to be encouraged, since such reliance is nothing more than the affirmance of the natural order of life.

[2] With the decision to rely on the writings of others, however, comes the responsibility of informing the reader that certain ideas have been borrowed. A reader can be informed in one of two ways. At the start of the work, the author can advise the reader of the principal writings that have been relied on. This means of information is particularly suitable where general thoughts rather than specific ideas have been borrowed. Alternatively, a reader can be informed that borrowing has taken place by means of a footnote or parenthetical reference at the point in the work where the borrowing has occurred. This means of informing the reader is to be preferred when a specific idea has been borrowed.

[3] How much of another's efforts can be borrowed without the work becoming a mere paraphrase of the original writing, or, in extreme cases, an instance of plagiarism, is difficult to say. On the one hand, it may be argued with some sincerity that there are no original ideas. On the other hand, it may be argued that all ideas are original to a given individual, regardless of how many times the idea has been proposed by others. In the final analysis, whether a work constitutes impermissible borrowing can only be determined on a case-by-case basis and by considering such matters as syntax, style, grammar, punctuation, and the like. Of course, due regard also should be given to Rules 1.1 and 1.2.

RULE 2.5 Verification of Sources

An author shall take such steps as are necessary to permit the work's sources to be verified.

COMMENT:

[1] All sources cited by a law review author must be indicated in such a fashion as to make their retrieval as speedy and easy as possible. This is so for two reasons. First, it allows the reader to more critically evaluate the law review author's arguments and come to a more informed decision regarding the validity of the work. Second, it facilitates the reader's use of the work.

[2] In most instances, reliance on one of the commonly-used systems of citation, such as those published by the Harvard Law Review (the Blue Book) or the University of Chicago Law Review (the Maroon Book), will satisfy this Rule.

[3] If, despite following the instructions set forth in one of the commonly-used systems of publication, the origin and location of a source are unlikely to be readily located, the law review author must add sufficient additional information so as to comply with this Rule.

RULE 2.6 Distortion of Sources

An author shall not distort any sources cited in the work.

COMMENT:

[1] At times, a law review author will find that a source only partially supports the law review author's point of view. In such instances, the law review author may not use the source in any manner that would be misleading or untruthful.

[2] Thus, for example, a law review author may not quote only part of a writing where to do so would be misleading. Similarly, a law review author may not quote an earlier edition of a writing when a later edition contradicts the earlier writing. Similarly, a law review author may not piece together portions of a writing in order to distill from it a meaning that is inconsistent with the writing when taken as a whole.

[3] While observing the foregoing, a law review author may suggest that a writing is correct in so far as it supports the law review author's own views but is wrong in so far as it differs from the law review author's views.

RULE 2.7 Contradictory Authorities

An author shall canvass and discuss contradictory authorities.

COMMENT:

[1] One of the greatest strengths of law reviews is that they are able to present a balanced view of legal issues. In doing so, they rise above partisan and petty politics and assist in the law's growth through informed analysis that considers all aspects of a matter. The maintenance of this unique characteristic is of vital importance.

[2] In order to ensure that law reviews are able to continue fulfilling their unique role in society, law review authors must seek out and then respond to or otherwise deal with all authorities that are relevant to the subject of their works, even though such authorities may challenge or contradict the law review author's own deeply held beliefs and views.

[3] In complying with this Rule, a law review author may not simply note the existence of contradictory authorities. A full and fair airing of such authorities is required so that the reader is provided with the greatest possible opportunity to evaluate and judge the worth and validity of the law review author's own work.

RULE 2.8 Conflict of Interest

An author shall reveal all influences that either did affect or may have affected the author in the production of the work.

COMMENT:

[1] Law review authors prepare works for a variety of reasons, such as personal pride or scholarly curiosity. Such reasons are sound motives for preparing a work.

[2] At times, a law review author will prepare a work for a more base reason, namely, to assist the cause of a present or a future client, to dispute or otherwise challenge an adverse judicial decision, to promote a particular point of view, to develop further one's legal practice, or to advance a personal matter. All of these reasons can be sound motives for preparing a work. However, in the preparation of a work where one of these influences is present, the law review author's judgment may become clouded. The result then will often be a work that is less than it might otherwise be.

[3] So that law reviews can maintain their role as objective presentations of the law and legal issues, a law review author who knows that a work has been produced subject to any of the influences detailed in Comment 2 above must disclose the existence of such an influence. The disclosure normally should appear in the law review author's biography or immediately preceding the footnotes. In any event, the disclosure must be prominent enough in its placement and clear enough in its description to allow the reader to accurately judge the nature and extent of the influence that may have affected the law review author.

RULE 2.9 Undue Credit

An author shall not take undue credit for any work.

COMMENT:

[1] It is the exceptional law review author who can produce a work without the assistance of others. In the course of production a law review author may depend, at one time or another, on partners, associates, law professors, librarians, student research assistants, members of the bar, government officials, private persons, and relatives and other loved ones. A feeling of gratitude may lead the law review author to privately thank some or all of these persons.

[2] In addition to whatever private appreciation the law review author chooses to display, the law review author may be obligated to note the identities of such persons in the work itself.

[3] In deciding which contributions must be acknowledged, the test to be employed is not one of common courtesy. Rather, the test is whether given individuals have made such significant contributions, or have performed their jobs in a manner so far beyond the normal requirements of those jobs, that to deny them public acknowledgment would constitute an unfair use of their efforts, talents, or time. In close cases, the law review author should opt for acknowledgment.

[4] Although a general acknowledgment is proper, a law review author may, where the circumstances warrant, indicate the exact role played by the individual in the production of the work.

[5] Quite apart from the foregoing, a law review author may not take credit for a work with which the law review author had only minimal involvement. Similarly, a law review author may not allow the law review au-

thor's name to be added to a work simply because doing so increases the stature of the work. Thus, for example, law professors may not add their names to works prepared by their students, even if the law student wishes to have the law professor do so in order to increase the likelihood of publication. In such circumstances, law professors may only add their names to the work if they make a substantial material addition to the work, such as by adding new portions or ideas to the work or revising the work in a meaningful manner.

Obligations to the Public

RULE 3.1 Prohibited Works

An author shall have the freedom to produce such works as comply with these Rules, except that an author shall not produce works designed solely to incite public prejudice.

COMMENT:

[1] Law reviews have the power to shape and influence the law and, through the law, the nature and direction of society. As such, they have the power to advance both good and evil.

[2] While the law cannot develop without a full and open discussion of all ideas, whether radical, moderate, or conservative, works that are designed solely for the purpose of inciting public prejudice, especially prejudice against a particular group, serve no legitimate purpose.

RULE 3.2 Works That Express Unpopular Ideas

An author shall not seek to avoid producing works that express unpopular ideas except for good cause.

COMMENT:

[1] Consistent with Rule 3.1, the production of works that express unpopular ideas, challenge long-held truths, examine areas long held hidden from critical inquiry, or otherwise cut against traditional notions, is to be encouraged. Law review authors should not seek to avoid subjects in the belief that the production of works on such subjects may expose the author to attack, ridicule, or sanctions.

[2] A law review author does not have an affirmative duty to seek out unpopular or controversial subjects. Rather, the duty is simply one not to shrink away from such subjects should they become relevant to the law review author's activities.

RULE 3.3 Confidential Information

An author shall not reveal any confidential information without first obtaining the consent of those to whom a duty of confidence is owed.

COMMENT:

[1] In the course of producing a work, a law review author may come to depend upon confidential information. In most instances, such information will have been gleaned from conversations with third persons, such as past or present clients, colleagues, or government officials. In such instances, the law review author may not reveal such information without first obtaining the consent of those to whom a duty of confidentiality is owed.

[2] Where a law review author is unable to obtain consent, the law review author may comply with these Rules, particularly Rules 2.3, 2.4, 2.5, 2.7, 2.8, and 2.9, by indicating that the work is based, either in whole or in part, on confidential information, the origin of which cannot be revealed.

RULE 3.4 Correction of Mistaken Impressions

An author shall take such steps as are necessary to correct any mistaken impressions fostered by the work.

COMMENT:

[1] From time to time a law review author may discover that, due to omissions or commissions in the editing, printing, or proofreading process, the meaning, content, or thrust of the work has been altered. In such instances, the law review author should take appropriate steps to clarify or correct the error. Clarification or correction may be achieved by the mere sending out of an errata sheet, or may entail substantially more, such as a republication of the entire work (whether in the same law review or, where that is not possible, in a different law review) and a repudiation of the first work.

[2] Much more serious is the case in which a law review author's work is misinterpreted by a subsequent writing. If silence on the part of the law review author would lead readers to believe that the subsequent writing is an accurate statement of the law review author's work, the law review author must take such steps as are necessary to correct the misleading impression that has been created.

RULE 3.5 Reporting Professional Misconduct

An author shall report misconduct on the part of all other authors.

COMMENT:

[1] A law review author is responsible primarily for the law review author's own conduct.

[2] Where a law review author learns of an act of misconduct on the part of another author, the law review author has an affirmative obligation to bring the misconduct to the attention of appropriate persons. Who is an appropriate person in a given situation depends upon the circumstances involved in the misconduct, but may include other authors, law reviews, law school officials, regulatory officials, professional colleagues, and employers.

