LEGAL ISSUES PRESENTED IN JOURNALS
(somewhat grouped by clusters, with significant overlap on some issues)

RED

1. Continuing to assert claim or defense after facts show non-meritorious
   Rules 1.16, 3.1 cases in Annotated MRPC;
   FRCP Rule 11 and cases
   Rule 5.3 Responsibility of subordinate lawyer
   Malpractice: no civil liability for withdrawal, because no duty to proceed with frivolous
   case; Restatement §§48-54, 110, comments, illustrations & case annotations

2. Underrepresentation by public defender
   Rules 1.1, 1.2, 1.3, 1.4
   law reviews and treatises on “indigent defense”
   ABA Standing Committee on Legal Aid & Indigent Defendants (SCLAID)
   http://www.abanet.org/legalservices/sclaid/
   Cases on ineffective assistance of counsel (Oklahoma and federal habeas corpus)
   Treatises (John Burkhoff and others)

3. Ethical Atmosphere of law firm
   gender and race discrimination; Title VII (ABA/BNA Lawyers’ Manual 91:301 Topical
   Guide, Professional Corporation, Private Firm; law review articles; cases involving King
   & Spaulding, Baker & Botts; “sexual harassment” ; “wrongful discharge” “denial of
   partnership”; Maute’s bibliography 38 Tulsa L.J. 167 (2002) & follow-up; Miles to Go
   2000: Progress of Minorities in the Legal Profession; ABA Resource Guide; Programs to
   http://www.abanet.org/minorities/; Dear Sisters, Dear Daughters, Words of Wisdom from
   Multicultural Women Attorneys; ABA Commission on Women in the Profession,
   http://www.abanet.org/women/ The Unfinished Agenda (ABA 2001); Visible Invisibility:
   (Executive Summary); pay discrimination (Kenneth Dau-Schmidt)

   work/life balance: many law review and professional journals; NALP Study; ABA Law
   Practice Management & George Kaufman, Lawyer’s Guide to Balancing Life & Work
   (2006); bar websites

   lying to clients; to other lawyers; and to courts: Rules 1.1-1.5 & 8.4; 4.1; 3.3. Lisa
   Lerman, “Lying to Clients” (Pennsylvania L. Rev.)
BLUE

1. Gender inequities and glass ceiling, “mommy track”; law firm hiring preferences; pay discrimination; “opt-out generation” Maute bibliography, 38 Tulsa L.J. 167 (2002) & update; secondary law review research; ABA Commission on Women in the Profession (and other sources cited above)

2. Role of Prosecutor
   Rule 3.8
   Scholarship by Bruce Green & Fred Zacharias; ABA Prosecution & Defense Standards

3. Duty to inform client of professional failure (when statute of limitations begins to run): Rules 1.1, 1.4, 1.8. See ABA/BNA Lawyers’ Manual (several cases); Restatement §§60-63

4. Legal malpractice cases as “unpopular causes”
   Permissible contingent fees: Annotated ABA MRPC 1.5, when fee is “excessive” OBA v. Weeks; federal statutory limits; Restatement §§34-43

5. Conflict of interest: suing current client; RPC 1.7 (directly adverse); Restatement §121-128
   Obstructing access to relevant documents; RPC 3.4; state & federal discovery rules; litigation sanctions and discipline
   Misrepresentation (forging documents): 8.4, 3.3, 3.4

5. Law firm referrals to another law firm: 1.5(e) (and state variations); Restatement §47; new Texas rules on lawyer referrals; client communications 1.4, clients as property of lawyer vs. absolute right to choice of counsel; litigation between referring and working attorney

YELLOW

1. Billing practices: Annotated RPC 1.5; 5.1, 5.3, 8.4; Restatement §§37-47. Note state variations in enforcement; insurance clients ABA F.Op. on audits; lap practice management on efficiency and delegation; ABA Center for Professional Responsibility site; Lisa Lerman, Geo. J. Legal Ethics (billing misconduct); Roy Simon (gross profits?); role of law firm as mentor of new entrants; impact of increased starting salaries on billing practices; law practice management; ABA F.Op. and local state ethics opinions on billing practices

2. Prosecutors: ABA Prosecution & Defense Function; writings by Bruce Green &/or Fred Zacharias; Michael Cassidy text, prosecutorial ethics; Principles of Federal Prosecution (1993); National District Attorneys Association “National Prosecution Standards” (2d ed. 1991)
3. Substance abuse: many ABA and state bar cites; secondary articles and books; discipline cases (personal incapacity; getting treatment as mitigating factor; law practice management)

GREEN

1. Competence, work/life balance and stress

2. Ethical atmosphere of legal work setting: 5.1-5.3; Restatement §§9-13; secondary sources (law review articles on law firms and other legal employers: corporate, large vs. mid-sized, vs. sole or small firms); character. Patrick Schiltz, Leslie Levin, Carroll Seron; David Wilkins. Employer expectations; efficiency vs. leave no stone unturned; transactional work; pressure to reach desired outcome. Rules 5.1 - 5.3; independent professional judgment; Sarbanes-Oxley obligations. “Elihu Root”: lawyer as instrumentalist; duty to further client’s wishes if not clearly unlawful

3. Race and gender: Visible Invisibility (Executive summary; other sources cited above); David Wilkins & Mitu Gulati

4. Rules 1.5, 1.8 non-refundable fees vs. when earned “up-front); lawyer taking property interest adverse to client (Okla. Ethics Op 313.; Lawyers’ Manual; reported decisions on adverse property/possessory interests; NY Cooperman; OH (several cases); 1.16 impairing right of client to discharge counsel; McKenzie Construction (3rd Circuit, fee dispute with client); distinctions among different types of clients

5. Law firm organization: satellite offices. Multijurisdictional practices and unauthorized practice of law http://www.abanet.org/cpr/mjp/home.html; (see charts on state adoptions and MJP Commission recommendations); distinctions among case law on pro hac vice; note that Okla. repealed foreign attorney registration requirements; Morgan & Rotunda chart.

ORANGE

1. Criminal Prosecution: personal vs. professional conflict of interest; impact on exercise of charging discretion (tax protesters?); defendants’ misuse of other law to intimidate/chill legitimate law enforcement; prosecutorial immunity. Criminal defense: “bleed & plead”; competence (knowledge, skill, preparation reasonable under circumstances); discourteous to opposing counsel and court; misrepresentations to clients and third parties; communicating with client and third parties; misdirected communications. Rules 1.1, 1.2, 1.3, 1.4, 3.2, 3.3; 4.1, 4.4, 8.4. Reputation in community; local standard of care in context; Professionalism & Civility Standards (local and nationally)

2. Documentation preparation: revisions and client communications; decisionmaking and candor. Rules 1.1, 1.2, 1.4, 3.3
3. Independent judiciary (recusal, social repercussions, politics, isolation); judicial selection, impartial administration of justice. CJC Canons 2-4. (If inclined, visit ABA CPR website for proposed overhaul of CJC; Prof. Swank working with OBA Committee.) See Lubet & Shaman treatise on Judicial Ethics

Cites to States where Practice Interests

Colorado http://www.courts.state.co.us/supct/committees/profconductcomm.htm
(proposals have been with Supreme Court for about 6 months; formal adoption is expected any time; summer of 2006 Court adopted new pro bono guidelines); Colorado has specialized tribunal dealing only with lawyer discipline cases, so its jurisprudence is coherent and consistent.

(proposals pending before Supreme Court)

Missouri (bar has submitted recommendations to Supreme Court); New advertising rules went into effect Jan. 1, 2006. See http://www.courts.mo.gov/page.asp?id=707


Georgia (mandatory bar); http://www.gabar.org/ethics/ethics__discipline_rules/ (new rules went into effect Jan. 1, 2001)

Texas
Current Disciplinary Rules of Professional Conduct
http://www.texasbar.com/Template.cfm?Section=Texas_Disciplinary_Rules&Template=/ContentManagement/ContentDisplay.cfm&ContentID=2203

Re Ethics 2000 review: Supreme Court Task Force working; State Bar Committee responding to Task Force Recommendations; no information yet public.
For current research: see books by Herring and Schuwerck & Hardwick. Much information on Texas State Bar website http://www.texasbar.com/