

Usually, authors of casebooks are not enthusiastic about revisions, but Nathan and Grace both had similar feelings when Aspen asked about a new edition: Nathan and Grace had so many complementary ideas and were excited to be able to work together on those ideas to create a new edition that is current with the fast-changing legal landscape of the world of the 2020s. In the words of Nathan that expresses Grace's sentiment as well: "My-co-author is so easy to work with that a new edition is a pleasure rather than a task." We have worked hard to update, streamline, inform, and challenge in this edition. We hope you approve of the product of our efforts.

The fundamental theme of this book is that each new lawyer must develop a philosophy of lawyering that suits that person. This book seeks to guide a student through the process of developing a personal philosophy to guide that person's legal career. Chapter 1 outlines three interrelated aspects of a philosophy of lawyering. At the personal level, a philosophy of lawyering deals with the relationship between lawyers' personal lives and values and their professional roles. At the practice level, a philosophy of lawyering provides guidance for lawyers on how to resolve uncertain issues of professional ethics. At the institutional level, a philosophy of lawyering involves a critical examination of the fundamental values of the legal system, such as the adversary system of dispute resolution, methods of regulation of lawyers, and mechanisms for delivery of legal services. Chapter 1 also provides an overview of various rules and standards of professional conduct along with the regulatory structure of admission and discipline governing lawyers.

Chapters 2 through 5 of the book examine fundamental aspects of professional responsibility:

The Attorney-Client Relationship (Chapter 2)

The Ethical Duty of Confidentiality, the Attorney-Client Privilege, and the Work Product Doctrine (Chapter 3)

Conflicts of Interest (Chapter 4)

Limitations on Zealous Representation (Chapter 5)

The final three chapters consider special problems: Ethical Issues Involving Judges and Government Attorneys (Chapter 6), Issues in the Delivery of Legal Services (Chapter 7), and Special Ethical Problems of Law Firms (Chapter 8).

The materials present three types of problems. Principal problems pose difficult issues of professional responsibility that do not have easy answers. These

problems require students to learn to exercise personal and professional judgment within the framework of rules of ethics. In many of these problems students should consider whether application of different philosophies of lawyering will produce contrasting decisions. The second type of problem involves rule reviews. These problems offer students a series of hypotheticals to focus their understanding of the major rules of professional conduct. The third and final type of problem consists of multiple choice assessments at the end of each chapter. These problems allow students to test their knowledge of the material in that chapter.

Choice of area of practice is an important aspect of a person's philosophy of lawyering. Thus, the problems presented in these chapters arise in various areas of practices—criminal defense and prosecution, civil litigation, business practice, government, and the judiciary—so that students can begin to get a sense of the ethical dilemmas they may face in particular practice contexts. These materials should help aspiring lawyers gain a rudimentary understanding for what it is like to be, for example, a criminal defense lawyer, a prosecutor, a civil litigator, or a business attorney. The website that accompanies the book contains references to the literature on various areas of practice for students who seek to delve further into these issues. For instructors who wish to focus on the ethical problems in particular areas of practice, the book contains an alternative table of contents organized by area of practice. The book is adaptable for the professional responsibility component of clinical programs and classes as well.

Throughout this edition, there are discussions of contemporary developments such as recent ABA Formal Opinions and “ripped from the headlines” current events such as legal proceedings related to the 2020 election and its aftermath. Materials that have become dated or no longer relevant have been omitted.

■ Some new features in this edition:

Chapter 1—

- Updated discussion of the admissions process to include the use of the UBE and the MPRE and
- Streamlined discussion of the discipline system to focus on current discipline systems.

Chapter 2—

- Expanded treatment of legal fees, focusing on different types of fee arrangements and trust account obligations;
- Updated discussions of recent case law on the enforceability of arbitration provisions in engagement agreements, alternative litigation finance, and the recent revision to Model Rule 1.8(e) regarding lawyers providing financial assistance to clients; and
- Further treatment of defense counsel's obligations when advising a client regarding a competency defense.

## Chapter 3—

- More in-depth discussion of the duty of confidentiality, comparing the scope of the duty of confidentiality in New York, the District of Columbia, and California with ABA Model Rule 1.6 and examining the concepts of use and disclosure;
- Greater discussion of the “possession exception” to the duty of confidentiality focusing on the lawyer’s decision to take possession of such evidence and the distinction between tangible criminal material and real incriminating evidence;
- Expanded treatment of the Sixth and Fifth Amendment implications of *Nix v. Whiteside*;
- Added discussion of confidentiality issues raised by technology such as artificial intelligence, virtual (remote) practice, and interacting with online reviews; and
- Expanded discussion of the crime-fraud exception to the attorney-client privilege in the context of litigation involving the 2020 Presidential election.

## Chapter 4—

- Reorganized and expanded discussion of direct adversity conflicts;
- Added discussions of multiple party representation in torts matters and criminal matters; and
- Added discussion of the “significantly harmful” standard of Model Rule 1.18.

## Chapter 5—

- Reorganized section on why lawyers represent guilty people, including a new comment; added discussion of the Pennsylvania and Michigan litigation challenging the 2020 Presidential election in light of the frivolous litigation issues raised in those cases;
- Added material on judicial statements about deposition conduct; updated discussion about negotiation ethics; and
- Added discussion of nondisclosure agreements, focusing on the agreement at issue in the Stormy Daniels/Donald Trump litigation.

## Chapter 6—

- New material on prosecutors’ ethical obligations under Rule 3.8 dealing with evidence of a wrongful conviction and
- New material on the Justice Department investigation of “pattern and practice” investigations of a number of city police departments.

## Chapter 7—

- Revised material on delivery of legal services including new material on removal of restrictions on the unauthorized practice of law, comments on legal services plans and delivery of legal services in criminal cases, and pro bono services offered by law firms.

## Chapter 8—

- Updated discussions of the continuing saga of the development and interpretation of Model Rule 8.4(g) dealing with discriminatory behavior, the obligations of firms and lawyers when lawyers leave firms, the effect of unauthorized practice of law changes on the multidisciplinary practice of law and the multijurisdictional practice of law, the increased acceptance of Alternative Business Structures for the practice of law, and lawyer well-being.

The book's companion website contains a detailed teacher's manual that can assist instructors in using different teaching styles, including traditional Q & A, discussion of complex problems, role play and drafting, or research exercises. The website also includes PowerPoint slides for teaching classes based on the most significant problems in the book.

Writing and revising this book continues to be both educational and pleasurable. We hope that students and instructors who use the book have a similar experience. Needless to say, we would appreciate receiving your comments.

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