

This book represents a unique collaboration between doctrinal, clinical, and legal skills law professors and a long-time practitioner who teach law students and collectively have dealt with most of the issues in this book. We begin your study by introducing you to our pedagogical goals as well as several distinctive features of the book you are about to use.

Overall, we intend these materials to (1) engage you in a fascinating and dynamic subject, (2) teach you the rapidly expanding law governing lawyers, (3) remind you of the need to pay careful attention to facts and context, and (4) invite you to recognize good lawyering, or the need to develop practical ethical judgment. You should prepare for every class by reading the assigned material and formulating an answer to the assigned problems.

Rules

Each section of this book cites two sets of rules: the relevant American Bar Association (ABA) Model Rules of Professional Conduct (cited as “MR”), and the Restatement (Third) of the Law Governing Lawyers (cited as “RLGL”). Courts, lawyers, and the Multistate Professional Responsibility Exam (MPRE) rely on both of these resources.

Cases

Most people new to this subject are surprised at the vast array of cases that explain and expand on the professional rule provisions and other legal and equitable remedies that make up the law governing lawyers. We offer you a rich assortment of 50 of these cases in this book. Each has been edited for clarity. We use brackets to indicate instances where language of the court’s opinion has been modified for clarity, but omitted language, citations and footnotes are not identified.

Afterwords

We refer to a new feature in this edition as an “Afterword.” These short commentaries follow some of the court opinions, providing additional information about later events, such as the case’s impact on the parties or its influence on the law governing lawyers.

Ethics Opinions

Many legal ethics issues are first addressed in an ethics opinion. We have included more in this edition to illustrate how the Rules of Professional Conduct apply to recent or recurring issues. Some of these opinions come from the ABA Standing Committee on Ethics and Professional Responsibility. Others are ethics opinions issued by state or local bar agencies or associations that apply their own Rules of Professional Conduct.

Problems

The short problems in each section of the book ask you to evaluate the actions of a hypothetical law firm, Martyn & Fox. To answer each problem, refer to the citations and other materials preceding them in each section. As you address the dilemmas faced by Martyn & Fox, you will discover the firm is capable of great inconsistency. At times, the lawyers at Martyn & Fox may seem wise and capable. On other occasions, you will wonder at their fallibility. In many situations, you may identify with their confusion and angst. Most often, the firm can be rescued from disaster by sage advice.

We expect these problems will illustrate the interesting dilemmas often faced by modern lawyers and give you insights into the significance of the rules, cases, and other assigned materials. We intend the brevity of each problem as a kind of cognitive prod that will direct you to recognize relevant issues and applicable law. The lack of context in each problem also might lead you to conclude that an accurate response “depends on” additional facts that could change the advice you offer Martyn & Fox. We invite you to identify those facts and consider how various situations would play out in real-life lawyering.

Once you get into the law governing a situation, you will discover occasions when Martyn, Fox, or Martyn & Fox has a range of options. In these instances, you should identify the range of discretion and articulate how you believe that discretion should be exercised. Here, we hope to engage your own moral compass and assist you in developing practical ethical judgment.

Short Stories

Several short stories in this book offer you the opportunity to engage in a difficult issue of legal ethics from the viewpoint of the lawyers confronting the situation. Larry initially wrote each these stories as book chapters. We have included them to offer you a break from traditional law study, an alternative way to learn some substantive law, and to show you the human face of some of the legal issues lawyers confront in practice.

Notes

In addition to short introductions, this book includes introductory notes and tables designed to explain the origin of or provide a guide to the substance of law you will learn. Additionally, we include 20 continuing notes organized around four general themes. These notes provide an opportunity to understand, connect, and integrate the basic law and policy courts have relied on in developing the law governing lawyers.

The first set continuing notes, entitled **Lawyers’ Roles**, makes explicit the often-unnoticed roles lawyers assume when they represent clients, with particular emphasis on the balance of power in the professional relationship between clients and lawyers.

Chapter 1:	The Client-Lawyer Relationship	page	3
Chapter 6:	The Directive Lawyer and Fiduciary Duty		117
Chapter 7:	The Instrumental Lawyer and the Bounds of the Law		170
Chapter 8:	Zealous Representation Within the Bounds of the Law		203

In the second set of notes, entitled **The Law Governing Lawyers**, we explore the fiduciary obligations lawyers assume when they say “yes,” or agree to represent clients, and the variety of legal and equitable remedies provided by the cases and materials when these obligations are disregarded.

Chapter 1:	Sources of Law	page	14
Chapter 2:	Professional Discipline		26
Chapter 3:	Identifying Clients		39
Chapter 4:	Tort Liability		64
Chapter 9:	Losing a Client by Disqualification or Injunction		215
Chapter 10:	Loss of Fee or Other Benefits		250

The third group of notes, entitled **The Bounds of the Law**, explain when lawyers may or must say “no” to clients because other generally applicable law imposes a limit on the lawyer’s advocacy and can impose penalties on lawyers unaware of these boundaries.

Chapter 6:	Court Orders	page	124
Chapter 7:	Fraud		149
Chapter 8:	Crime		181
Chapter 14:	A Reprise		355
Chapter 15:	The Constitution		402

The final set of notes focuses on **Lawyers and Clients** in five common practice settings. Here, we examine specialized legal regulation of the client’s rights and responsibilities, which in turn shapes, enhances, and can limit a lawyer’s advocacy on behalf of the client.

Chapter 3:	Service <i>Pro Bono Publico</i>	page	49
Chapter 5:	Criminal Defense		99
Chapter 6:	Representing Organizations		132
Chapter 10:	Insurance Defense		262
Chapter 11:	Representing Governments		289

Our Editing Style

We have edited all of the cases, ethics opinions, and secondary source materials to focus on the relevant ethical issues and law governing lawyers. Many documents are substantially edited and all omit some citations and footnotes without notice. We consider the remaining citations and footnotes worthwhile.

To facilitate understanding and avoid distraction, we do not indicate deleted language from original source material with ellipses. We do use brackets to indicate any addition or clarification of original texts. We cite to state cases using regional reporters and provide Westlaw or internet cites to unpublished or recent material.

We cite to the American Bar Association’s Model Rules of Professional Conduct, by referring to Model Rule(s) [#(s)], MR [#], or Rule [#]. When citing a Model Rule or a particular jurisdiction’s Rule of Professional Conduct, we refer to the most recent version when this book was published. We indicate the year only when we refer to a previous version of a rule.

We cite to the American Law Institute's Restatement (Third) of the Law Governing Lawyers (2000), by referring to "RLGL" [§]. We refer to other restatements, such as the Restatement (Third) of Agency (2006), by providing a full citation.

The Combination

Overall, we intend the rules, cases, afterwords, ethics opinions, problems, stories, and notes in this book to serve as a guide to identifying, understanding, and avoiding the minefields and mistakes the lawyers in these materials have confronted. We also hope you enjoy this study as much as we have enjoyed preparing it.

Susan Martyn, Larry Fox, Ana Pottratz Acosta, and Ashley M. London
June 2022