

# PREFACE

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Although this book can usefully be read by anyone interested in learning about the regulation of the legal profession, the authors intend and expect that it will be read and discussed by students who are enrolled in an American law school and taking a required course that might variously be called Legal Ethics, Professional Responsibility, Legal Profession, or the Law Governing Lawyers. We also assume that most of our readers are attending law school because they aspire to embark on a career as a lawyer and are seeking the knowledge and skill necessary to secure admission to the bar, secure gainful employment as a lawyer, and thereafter enjoy a long and successful career practicing law. Thus, this book focuses on the rights and responsibilities of lawyers as such and, more particularly, their rights and responsibilities in connection with their practice of law.

A distinctive feature of this book is its organization. Basically, we present these materials as they relate to activities in which a lawyer is likely to engage at various times in the lawyer's career. Chronologically, we start with you in law school preparing to seek admission to the bar in one or more jurisdictions. Thereafter, we move to you seeking a job as a lawyer, then to you (or a law firm with which you have associated) seeking clients who you might represent, then to you relating to your clients and representing them in their dealings with third persons, and, then, at some point you or your law firm or a client terminating the client's representation. Every new lawyer will sooner or later be involved in each of these stages of what we call "the life cycle of the practice of law" as will recur throughout the lawyer's career. This book, then, introduces you to the law and professional responsibilities applicable to lawyers in each of the stages of this recurring life cycle in the order in which you are likely to confront them in the practice of law.

While most of this book is devoted to the study of the professional responsibilities of lawyers as they proceed through this recurring life cycle of the practice of law, we also have assumed that each of you is looking forward to a long life in the law, and that there are some professional opportunities and related issues that are likely to arise later in your career as a lawyer or at the end of your career. Thus, we examine the professional responsibilities associated with you eventually assuming supervisory or managerial responsibilities. Some of you will face these issues right out of law school, some will confront them sooner rather than later, and some will never face them other than as an observer of other lawyers who have become supervisors or managers. For organizational purposes, however, we treat these as "mid-career" opportunities and

issues. Similarly, we treat becoming and being a judge as a mid-career opportunity giving rise to a distinctive set of mid-career issues facing those who would be judges, are judges, or return to law practice after having served as a judge.

We conclude by addressing some issues related to the end of your career as a lawyer—whenever or however that may occur. More reflectively, we also ask you to look forward to looking backward at what we hope will have been a rewarding life in the law.

In addition to organizing our book by reference to the life-cycle of a lawyer—both generally from beginning to end and more specifically from the beginning to the end of a lawyer’s relationship with and representation of clients—we also organize the readings by reference to activities in which a lawyer engages, such as associating with law firms, seeking clients, establishing client-lawyer relationships, filing complaints, trying cases, terminating a representation, etc. In this regard, we proceed with an awareness that some lawyers limit their practices to the representation of clients in connection with prospective or pending litigation, and others limit their practices to the representation of clients in connection with the formation of business firms and business transaction. Still others limit their practices to mediation. Among litigators there are full and part-time prosecutors and there are lawyers who specialize in the representation of those accused of crime, both as public defenders and private practitioners. On the civil side, some lawyers represent plaintiffs only, and some lawyers represent defendants only. Some lawyers practice as full-time employees of government agencies. Some lawyers in private practice—commonly referred to as in-house counsel—are full-time employees of a company and only represent it or its organizational affiliates. Government agencies and business firms are known as “organizational clients” and some lawyers who represent multiple clients only represent organizational clients and some only represent individuals. A lawyer’s client may be sophisticated and experienced consumers of legal services. The client, on the other hand, might not be either sophisticated or experienced in the ways of the law, even to the extent of being what the ABA Model Rules refers to as “a client under a disability.” Some clients will be paying the lawyer who represents them; some will not. One of the goals of this book, then, is to our readers’ awareness of the variety of roles lawyers play, the variety of settings and circumstances in which those roles are played, and raise questions about how this variation may or should affect a lawyer’s professional responsibilities.

With respect to subject matter coverage, this book addresses the issues typically covered in law school professional responsibility courses, but it also introduces our readers to some other topics as well. We focus on lawyers doing what lawyers do. In this regard, almost every Chapter

addresses an activity in which a practicing lawyer will engage and begins with a problem that a lawyer has faced or may face in their practice of law. For the most part, the readings are rules, cases, and ethics opinions. The common core is that these primary legal materials involve lawyers speaking to lawyers. Although we also alert students to what law professors have to say on various issues, we primarily use the materials that the students are likely to use as they seek to comply with the law governing lawyers after they have entered practice. In the end, we think we have provided our readers with the information they will need to begin a career-long learning process that will enable them, first and foremost, to self-identify and self-resolve professional responsibility issues that inevitably will arise in a law practice. We also think of these materials as providing a solid foundation for a lawyer's participation in the processes through which the law governing lawyers is promulgated and enforced in America. We hope your reading and discussion of the materials in this book will inspire you to seek such an opportunity to improve the law governing lawyer and its enforcement.

To that end we have included many questions or problems throughout the book. In response to each of these questions or problems, our primary question to you will always be: "What do you think?" We think what you think is as important as what we or anyone think. We assume some, but not all, of these questions will be discussed in class. Actually, we know from our own experience that there is never enough time in a class for discussion of all the questions posed in a given chapter. We think, however, that each question is worthy of your attention and that you will be well served by at least taking a good faith stab at a tentative answer and explanation for the answer to each question. We also think your questions are equally worthy of attention, and hope you will take the initiative to bring them to the attention of your professor and classmates.

With this second edition of the book, the original authors were fortunate enough to convince Professors Paula Schaefer and Cassandra Burke Robertson to come onboard as coauthors. Their contributions have greatly enhanced this new edition.

Finally, before you hustle off to examine the table of contents and start reading Chapter 1, please allow us to say thank you to a large group of students at the University of Tennessee College of Law. These students provided us with good questions and good answers. They offered constructive criticism. Among these students (with apologies to others whose contributions have been obscured from mind by the passage of time) are Anna Burck Williams, Craig Meredith, Travis Smuckler, James Inman, Sarah Swan, Jon Meagher Taylor Williams, Will Rogers, Anna Swift, Grayson Schleppegrell, Ashley Waddle, and Zachary Arnold. The virtues of this book are in large part due to the professionally responsible

engagement of our students in their study of this very important, interesting, and challenging subject that provides the foundation for a rewarding career in a profession for which we have the greatest respect and to the further improvement of which we hope to contribute. So, let's turn to Part 1 and start thinking about the process through which you will become a lawyer and some of the core responsibilities you will assume when you are admitted to the bar. We trust this will whet your appetite for using this course and this book as an aid in the commencement of your life-long learning about what lawyers do and how they should behave.

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