

Table of Contents

	Page
GENERAL FOREWORD	III
INDIVIDUAL AUTHOR PREFACES AND ACKNOWLEDGMENTS.....	VII
PART ONE. THE LEGAL PROFESSION AND LEGAL SERVICES: NATURE AND EVOLUTION	
CHAPTER 1-1. THE STRUCTURE OF THE LEGAL PROFESSION	3
§ 1-1.1 The Two Hemispheres of Law Practice.....	3
§ 1-1.2 How the Segments Have Changed over Time	4
§ 1-1.3 Challenges of Law Practice Serving People.....	6
CHAPTER 1-2. THE PROBLEM OF LAGGING LEGAL PRODUCTIVITY.....	9
§ 1-2.1 Cost Disease.....	9
§ 1-2.1(a) Higher Profits for Those Servicing Large Organizational Clients	10
§ 1-2.1(b) Organizational Clients Searching for Substitutes to Traditional Law Firms.....	10
§ 1-2.1(c) Waning Demand Among Individual Clients	14
§ 1-2.1(d) Impact of Legal Economy on Law School Enrollments	15
CHAPTER 1-3. THE FUTURE OF THE LEGAL PROFESSION.....	19
§ 1-3.1 A Structural Shift.....	19
§ 1-3.1(a) The Future of Dispute Resolution for Individuals.....	20
§ 1-3.1(b) The Way Forward Is Multidisciplinary	22
PART TWO. THE PHILOSOPHY OF LEGAL ETHICS	
CHAPTER 2-1. FOUNDATIONS OF THE LAWYER'S ROLE	27
§ 2-1.1 The Function of Lawyers—Their Role in Society	27
§ 2-1.2 Professional Ethics	28
§ 2-1.3 Role Specific Morality.....	30
§ 2-1.4 Can a Good Person Be a Good Lawyer: The Controversy over a Lawyer's Role Specific Morality.....	34
CHAPTER 2-2. JURISPRUDENCE AND THE LAWYER'S ROLE: LOOKING TO AN UNDERSTANDING OF LAW—RATHER THAN TO MORALITY—FOR THE SOURCE OF LAWYERS' ETHICAL RESTRAINT.....	41
§ 2-2.1 Introduction	41
§ 2-2.2 The Jurisprudential Turn	41
§ 2-2.3 Natural Law Theory	42
§ 2-2.4 Legal Positivism	43
CHAPTER 2-3. MORAL COUNSEL AND THE GAP BETWEEN LAW AND MORALITY	45

CHAPTER 2-4. THE CORPORATION AS CLIENT—AMORAL ETHICS SQUARED	49
CHAPTER 2-5. MORAL REMAINDERS	53
PART THREE. DEVELOPMENT TOWARD PROFESSIONALISM AND THE FORMATION OF AN ETHICAL PROFESSIONAL IDENTITY TO BECOME AN EFFECTIVE LAWYER	
CHAPTER 3-1. PROFESSIONALISM AND PROFESSIONAL IDENTITY.....	57
§ 3-1.1 Why Development Toward Professionalism and the Formation of an Ethical Professional Identity Is Important.....	57
§ 3-1.2 Understanding the Formation of an Ethical Professional Identity in the Context of the Historical and Sociological Development of Professionalism and Professional Formation.....	58
§ 3-1.2(a) Law as a Learned Profession	58
§ 3-1.2(b) Understanding the Importance of the Professional-Formation Competencies to Effectiveness in the Practice of Law	63
§ 3-1.3 Understanding the Formation of an Ethical Professional Identity in the Context of the ABA’s Model Rules and Reports and the Understanding of Exemplary Lawyers.....	68
§ 3-1.3(a) The ABA’s Model Rules of Professional Conduct.....	69
§ 3-1.3(b) Elements of an Ethical Professional Identity Defined in the ABA and Conference of Chief Justice Reports.....	71
§ 3-1.3(b)(1) The Stanley Commission Report in 1986	71
§ 3-1.3(b)(2) The MacCrate Report in 1992	72
§ 3-1.3(b)(3) The Haynsworth Report in 1996.....	72
§ 3-1.3(b)(4) The Conference of Chief Justices’ National Action Plan on Lawyer Conduct and Professionalism in 1999.....	73
§ 3-1.3(c) Exemplary Lawyers’ Understanding of the Elements of an Ethical Professional Identity—Results of a 2012 Study	74
§ 3-1.3(d) Synthesis of the Key Elements of an Ethical Professional Identity from the Model Rules, the Three ABA Reports, the CCJ National Action Plan, and the Study of Exemplary Lawyers.....	76
§ 3-1.4 Comparison of the Competencies Defining an Ethical Professional Identity from the Model Rules, the ABA Reports and Exemplary Lawyers with the Professional-Formation Competencies That Legal Employers and Clients Want	78
CHAPTER 3-2. THE IMPORTANCE OF STRESS MANAGEMENT IN THE FORMATION OF AN ETHICAL PROFESSIONAL IDENTITY	81
§ 3-2.1 Sources of Stress for Lawyers	81
§ 3-2.1(a) External Pressure of Law Practice	82
§ 3-2.1(a)(1) Workload.....	82
§ 3-2.1(a)(2) Financial Strain	83
§ 3-2.1(a)(3) Adversarial Atmosphere	83
§ 3-2.1(a)(4) Perception of Low Decision Latitude	84
§ 3-2.1(b) Internal Traits of Lawyers	85
§ 3-2.1(b)(1) Perfectionistic.....	85

§ 3-2.1(b)(2) Competitive	85
§ 3-2.1(b)(3) Extrinsically Motivated	86
§ 3-2.2 Values, Needs, Motivation, and Well-Being	87
§ 3-2.3 Impact of Public Service.....	88
§ 3-2.4 Importance of Organizational Ethical Culture.....	90

CHAPTER 3-3. PROFESSIONAL IDENTITY FORMATION AND THE LAW

SCHOOL CURRICULUM.....	93
§ 3-3.1 The Learning Outcomes That Law Faculties Are Adopting on the Ethical Professional Formation of Each Student	93
§ 3-3.2 Defining the Stages of Growth for a Commitment to Professional Development Learning Outcome (From Novice to Advanced Beginner to Competent to Expert)	96
§ 3-3.3 The General Principles That Should Guide the Development of Effective Curriculum to Foster Each Student's Ethical Professional Identity	101
§ 3-3.4 What Can We Learn About Professional-Identity Formation from MBA Education?.....	104

PART FOUR. LEGAL ETHICS AND THE PRACTICE OF LAW

CHAPTER 4-1. SOURCES OF LEGAL ETHICS AND THE LAW OF LAWYERING

111	
§ 4-1.1 A Brief History of Professional Ethics for American Lawyers	111
§ 4-1.1(a) Evolution of Professional Ethics Rules Within a Self-Regulating Bar	111
§ 4-1.1(b) From Canons to Code to Rules.....	112
§ 4-1.1(c) The Nearly-Complete Transition from the Code to the Model Rules	114
§ 4-1.1(d) Rules of Ethics, Professional Morality, and Character	116
§ 4-1.2 The Restatement of the Law Governing Lawyers	117
§ 4-1.3 The Courts: Sanctions, Disqualification, and Legal Malpractice Liability....	119
§ 4-1.3(a) Judicial Sanctions.....	119
§ 4-1.3(b) Disqualification of a Lawyer in Litigation	120
§ 4-1.3(c) Legal Malpractice Liability	122
§ 4-1.4 Criminal, Dishonest, and Discriminatory Conduct.....	125
§ 4-1.4(a) Criminal Conduct.....	125
§ 4-1.4(b) Dishonesty, Fraud, Deceit, and Misrepresentation.....	126
§ 4-1.4(c) Discrimination and Harassment	127
§ 4-1.5 A Brief Outline of Lawyer Discipline	131
§ 4-1.5(a) A Central Body for Receiving, Evaluating, and Investigating Ethical Complaints Against Lawyers.....	132
§ 4-1.5(b) Preparation for and Formal Hearing on Prosecuted Complaint	134
§ 4-1.5(c) Standard of Proof and Issue Preclusion	135
§ 4-1.5(d) Confidentiality and Immunity in Disciplinary Proceedings	136
§ 4-1.5(e) Decision by Hearing Panel or Officer and Further Review	137
§ 4-1.5(f) Types of Sanctions and Factors in Evaluating the Appropriate Sanction.....	137
§ 4-1.5(f)(1) Private Admonition.....	138
§ 4-1.5(f)(2) Public Reprimand or Censure	139

§ 4-1.5(f)(3)	Suspension.....	139
§ 4-1.5(f)(4)	Disbarment or License Revocation	140
§ 4-1.5(f)(5)	Probation	141
§ 4-1.6	Lawyer Disciplinary Jurisdiction, Multijurisdictional Practice of Law, and Choice of Law	141
§ 4-1.6(a)	Introduction to Disciplinary Jurisdiction, Multijurisdictional Practice, and Choice of Law	141
§ 4-1.6(b)	Multijurisdictional Practice of Law	143
§ 4-1.6(b)(1)	Temporary Practice in Association with State Lawyer	143
§ 4-1.6(b)(2)	Temporary Practice Before a Tribunal—Admission <i>Pro Hac</i> <i>Vice</i>	144
§ 4-1.6(b)(3)	Alternative Dispute Resolution Proceeding Related to Lawyer’s Home Practice	145
§ 4-1.6(b)(4)	Other Temporary Services Incidental to Lawyer’s Home Practice	146
§ 4-1.6(b)(5)	House Counsel for an Entity	148
§ 4-1.6(b)(6)	Legal Services Authorized by Federal or Other Law.....	148
§ 4-1.6(b)(7)	Legal Services Following a Major Disaster	149
§ 4-1.6(c)	Disciplinary Jurisdiction	150
§ 4-1.6(d)	Choice of Law for Exercise of Disciplinary Authority	152
§ 4-1.6(d)(1)	Choice of Law for Conduct Before a Tribunal	153
§ 4-1.6(d)(2)	Choice of Law for Other Matters.....	153
§ 4-1.6(d)(3)	Choice of Law Agreements	155
 CHAPTER 4-2. ADVERTISING FOR AND SOLICITATION OF CLIENTS: INFORMATION ABOUT LEGAL SERVICES..... 157		
§ 4-2.1	Introduction to Lawyer Advertising and Solicitation	157
§ 4-2.2	History of Lawyer Advertising and Solicitation	158
§ 4-2.3	The Lawyer’s Duty Not to Make a False or Misleading Statement About Professional Services	160
§ 4-2.4	Advertising or Informing About Legal Services	163
§ 4-2.4(a)	General Authorization of Lawyer Advertising.....	163
§ 4-2.4(b)	Advertising by Broadcast Media.....	164
§ 4-2.4(c)	Communication by Internet Including Web Pages and Social Media	168
§ 4-2.4(d)	Advertising by Mail	169
§ 4-2.4(d)(1)	The History of Regulation of Lawyer Direct Mail.....	169
§ 4-2.4(d)(2)	Targeted Mail to Persons Known to Need Legal Services.....	170
§ 4-2.4(e)	Regulation of Style and Emotional Appeal	172
§ 4-2.4(f)	Communicating Fields of Practice and Specialization	174
§ 4-2.4(f)(1)	History of Identification of Practice Areas and Specialization	174
§ 4-2.4(f)(2)	Communicating Practice in Particular Fields of Law	174
§ 4-2.4(f)(3)	Communicating Certification as a Specialist.....	175
§ 4-2.4(g)	Firm Name	176
§ 4-2.4(g)(1)	Firm Designation by Lawyer Names	177
§ 4-2.4(g)(2)	Firm Designation by Trade Name	178
§ 4-2.4(g)(3)	Claims of Partnership or Association	179

§ 4-2.4(h)	Advertising Disclaimers	180
§ 4-2.4(h)(1)	Decline of General Advertising Disclaimers	180
§ 4-2.4(h)(2)	Disclaimers for Advertising Suggesting Lawsuits	180
§ 4-2.4(h)(3)	Disclaimers for Advertising on Fees	180
§ 4-2.4(i)	Taking Personal Responsibility for Lawyer Advertising	181
§ 4-2.4(j)	The General Prohibition on Paying for Referrals	181
§ 4-2.4(k)	Exceptions to the Prohibition on Paying for Referrals	182
§ 4-2.4(k)(1)	Paying the Costs of Advertising	182
§ 4-2.4(k)(2)	Legal Service Plans	183
§ 4-2.4(k)(3)	Qualified Lawyer Referral Service	184
§ 4-2.4(k)(4)	Non-Profit Lawyer Referral Service	184
§ 4-2.4(k)(5)	Purchasing a Law Practice	185
§ 4-2.4(k)(6)	Reciprocal Professional Referral Agreements	185
§ 4-2.5	The Prohibition on Direct Solicitation of Prospective Clients	185
§ 4-2.5(a)	The Purpose and Nature of the Prohibition on Direct Solicitation	185
§ 4-2.5(b)	Exemptions from the Direct Solicitation Prohibition	187
§ 4-2.5(b)(1)	Solicitation to Lawyers	187
§ 4-2.5(b)(2)	Solicitation to Family and Close Friends	187
§ 4-2.5(b)(3)	Solicitation to Current, Former, and Prospective Clients	187
§ 4-2.5(c)	Communications with Members of a Class or Potential Class in Litigation	188
§ 4-2.5(d)	Direct Solicitation for Public Interest Purposes	189
§ 4-2.5(e)	Participation in a Legal Services Plan That Solicits Membership	190
§ 4-2.5(f)	Public Communications by the Lawyer About Legal Topics	191
§ 4-2.6	Prohibition of “Pay-to-Play” Political Contributions in Exchange for Legal Work	193

CHAPTER 4-3. THE ATTORNEY-CLIENT RELATIONSHIP: BEGINNING TO END

195

§ 4-3.1	Duties to Prospective Clients	195
§ 4-3.1(a)	Overview of the Lawyer’s Responsibilities to Prospective Clients	195
§ 4-3.1(b)	Defining the Prospective Client	196
§ 4-3.1(c)	The Prospective Client and Confidentiality	197
§ 4-3.1(d)	The Prospective Client and Conflicts of Interest	198
§ 4-3.1(e)	Controlling the Prospective Client’s Disclosure of Information or Obtaining an Advance Waiver of a Conflict	200
§ 4-3.2	Creation and Nature of the Attorney-Client Relationship	202
§ 4-3.2(a)	Elements for Establishing the Attorney-Client Relationship	202
§ 4-3.2(b)	Business Relationships and Law-Related Services	203
§ 4-3.2(b)(1)	Categorizing Law Practice and Law-Related Services	204
§ 4-3.2(b)(2)	Services Constituting the Practice of Law by a Lawyer	204
§ 4-3.2(b)(3)	Unrelated Business Activities by a Lawyer	208
§ 4-3.2(b)(4)	Defining Law-Related Services by a Lawyer	208
§ 4-3.2(b)(5)	Law-Related Services Provided as Part of a Law Practice	209
§ 4-3.2(b)(6)	Law-Related Services Provided Distinct from a Law Practice	210
§ 4-3.2(c)	Lawyer Responsibility for Misunderstanding About Relationship	212
§ 4-3.3	Scope of Representation	213
§ 4-3.3(a)	Introduction to Scope of the Representation	213

§ 4-3.3(b)	Agreements to Limit the Scope of Representation	214
§ 4-3.3(c)	“Unbundled Legal Services” and Assisting <i>Pro Se</i> Litigants	215
§ 4-3.3(d)	Collaborative Lawyering Agreements	216
§ 4-3.3(e)	Reasonableness of Scope Limitation.....	218
§ 4-3.4	Allocating Decision-Making Authority Between Client and Lawyer	219
§ 4-3.5	Client with Diminished Capacity	222
§ 4-3.5(a)	Maintaining an Attorney-Client Relationship with and Respecting the Dignity of Persons with Diminished Capacity	222
§ 4-3.5(b)	Taking Legal Action to Protect the Interests of the Client with Diminished Capacity	224
§ 4-3.5(b)(1)	Evaluating Client’s Capacity and Whether to Take Protective Action	224
§ 4-3.5(b)(2)	Considering Whether to Seek a Guardian.....	225
§ 4-3.5(b)(3)	Person or Guardian as Client.....	226
§ 4-3.5(b)(4)	Representing Children.....	226
§ 4-3.5(b)(5)	Acting Contrary to Client’s Wishes.....	227
§ 4-3.5(b)(6)	Emergency Situation	227
§ 4-3.5(b)(7)	Confidentiality When Representing Client with Diminished Capacity	228
§ 4-3.6	Ending the Representation	228
§ 4-3.6(a)	The Ordinary Conclusion of the Representation	228
§ 4-3.6(b)	Termination of the Lawyer by the Client.....	229
§ 4-3.6(b)(1)	The Near-Absolute Right of the Client to Terminate the Lawyer	229
§ 4-3.6(b)(2)	Wrongful Discharge Claims by In-House Counsel and Law Firm Employees	230
§ 4-3.6(c)	Termination by the Lawyer.....	234
§ 4-3.6(c)(1)	Mandatory Withdrawal (or Decline).....	234
§ 4-3.6(c)(2)	Permissive Withdrawal	234
§ 4-3.6(d)	Protecting the Client’s Interest upon Withdrawal	237
§ 4-3.7	Sale of a Law Practice and Effect on Clients	238
§ 4-3.7(a)	Background and Overview on Sale of a Law Practice	238
§ 4-3.7(b)	Termination of Seller’s Practice upon Sale of a Law Practice	240
§ 4-3.7(c)	Valuing the Law Practice and Paying the Sale Price.....	241
§ 4-3.7(d)	Selling the Entire Practice or Practice Area	243
§ 4-3.7(e)	Notice to Clients and Protection of Confidentiality.....	245
§ 4-3.7(f)	Fees Charged to Clients May Not Be Increased	246
CHAPTER 4-4. FUNDING OF LEGAL SERVICES: FEES, COMPENSATION, AND FEE SHIFTING		247
§ 4-4.1	Funding of Legal Services: Introduction	247
§ 4-4.2	Reasonableness and Legality of Fees	248
§ 4-4.2(a)	The Objective Standard of a Reasonable Fee and Expenses	248
§ 4-4.2(b)	Hourly Billing.....	249
§ 4-4.2(b)(1)	Nature and Reasonableness	249
§ 4-4.2(b)(2)	Honesty in Fee Billing	251
§ 4-4.2(c)	Contingency Fees	252
§ 4-4.2(c)(1)	The Legitimacy of the Contingency Method for Legal Fees.....	252

§ 4-4.2(c)(2)	The Reasonableness Standard Applied to Contingency Fees	253
§ 4-4.2(c)(3)	Contingency Fee Agreements Must Be in Writing	254
§ 4-4.2(c)(4)	Prohibition of Contingency Fees in Criminal and Domestic Relations Cases	254
§ 4-4.2(d)	Flat Fees	255
§ 4-4.3	The Lawyer's Duty to Communicate the Basis for and Rate of a Fee to the Client	256
§ 4-4.4	Advanced Fee Deposits and the Illegitimacy of "Nonrefundable Retainers"	258
§ 4-4.4(a)	Advance Fee Deposits and Refunding of Unearned Fees	258
§ 4-4.4(b)	A Retainer for Lawyer Availability	258
§ 4-4.4(c)	The Illegitimacy of a "Nonrefundable Special Retainer"	259
§ 4-4.5	Division of Fees Among Lawyers	260
§ 4-4.6	Payment of Fees by Persons Other than Clients	262
§ 4-4.7	Fee Disputes	263
§ 4-4.8	Fee Shifting: Recovering Legal Fees from Another Party	263
§ 4-4.8(a)	Introduction to Attorney's Fee Shifting	263
§ 4-4.8(b)	Eligibility for a Fee Award—Prevailing Party Status	264
§ 4-4.8(c)	Measuring the Fee Award	265
§ 4-4.8(c)(1)	The Road to the Lodestar Approach	265
§ 4-4.8(c)(2)	Hours Reasonably Expended	266
§ 4-4.8(c)(3)	A Reasonable Hourly Rate	269
§ 4-4.8(c)(4)	Adjustment to the Lodestar	270
§ 4-4.8(c)(5)	Compensation for Delay in Receipt of Fees	272
§ 4-4.8(c)(6)	Fees for Fees	272
CHAPTER 4-5. DUTIES TO EFFECTIVELY REPRESENT THE CLIENT		273
§ 4-5.1	The Lawyer's Duty to Competently Represent the Client	273
§ 4-5.1(a)	The Fundamental Expectation of Professional Competence	273
§ 4-5.1(a)(1)	General Standard of Competence	273
§ 4-5.1(a)(2)	Attaining Competence in a New Area	274
§ 4-5.1(a)(3)	Associating with a Lawyer of Established Competence	275
§ 4-5.1(b)	The Need for Expertise in Certain Fields of Law	276
§ 4-5.1(c)	Lawyer Mistakes, Personal Problems, and Competence	277
§ 4-5.2	Counseling Through Candid, Moral, and Lawful Advice	278
§ 4-5.2(a)	Counseling a Client Within the Expanding Scope of Law Practice	278
§ 4-5.2(b)	Candid Advice and Moral Deliberation	279
§ 4-5.2(b)(1)	Offering Fortright Advice and a Frank Evaluation	279
§ 4-5.2(b)(2)	Moral Engagement with Client	280
§ 4-5.2(b)(3)	Professional Humility and Assistance by Other Professionals	283
§ 4-5.2(c)	Counseling a Client on the Requirements of the Law While Not Assisting a Client in Fraudulent or Criminal Conduct	284
§ 4-5.3	Diligence and Zealous Representation	286
§ 4-5.3(a)	Diligence and Zealousness on Behalf of the Client	286
§ 4-5.3(b)	Diligent Action to Protect Rights of the Client	286
§ 4-5.3(c)	Diligent Action to Avoid Unnecessary Anxiety to the Client	287

§ 4-5.3(d)	Protecting the Client in Event of Lawyer’s Death, Disability, or Suspension	288
§ 4-5.3(e)	Zealous Advocacy, Professionalism, and Civility.....	288
§ 4-5.4	The Duty to Keep the Client Informed.....	291
§ 4-5.4(a)	The Duty to Communicate as Respect for the Client	291
§ 4-5.4(b)	The Duty to Communicate with the Client to Affirm Client’s Authority	292
§ 4-5.4(c)	The Duty to Maintain Regular Communication and Respond to Client Inquiries	293
§ 4-5.4(d)	Confirming the Lawyer Will Not Assist in Violating the Law or Professional Expectations	294
§ 4-5.4(e)	Withholding Information from a Client	294
§ 4-5.5	The Duty of a Fiduciary to Put the Client First.....	295
§ 4-5.6	The Duty to Safeguard Client Funds and Property	297
§ 4-5.6(a)	Safekeeping and Separating Client Funds and Property	297
§ 4-5.6(b)	Accounting for and Delivering Client Funds and Property	299
§ 4-5.6(c)	Disputes Regarding Funds or Property Held by the Lawyer.....	299
§ 4-5.6(c)(1)	Disputes Between Lawyer and Client over Funds or Property Held by the Lawyer	299
§ 4-5.6(c)(2)	Disputes Between Client and Third Person over Funds or Property Held by the Lawyer	301
CHAPTER 4-6. DUTIES TO PROTECT CONFIDENTIALITY OF CLIENT INFORMATION		305
§ 4-6.1	The Fundamental Principle of Confidentiality.....	305
§ 4-6.2	Confidentiality: Scope and Pervasive Principles in the Rules.....	309
§ 4-6.3	The Attorney-Client Privilege.....	312
§ 4-6.3(a)	The Special Evidentiary Immunity Given to Attorney-Client Communications	312
§ 4-6.3(b)	The Elements of the Attorney-Client Privilege	313
§ 4-6.3(b)(1)	Seeking Legal Advice.....	314
§ 4-6.3(b)(2)	Involving a Professional Legal Advisor	320
§ 4-6.3(b)(3)	Communication Relating to Legal Advice	321
§ 4-6.3(b)(4)	Made in Confidence.....	322
§ 4-6.3(b)(5)	By Client or Lawyer.....	323
§ 4-6.3(b)(6)	Protected at Client’s Insistence.....	324
§ 4-6.3(b)(7)	Protected from Disclosure by Client or Lawyer	324
§ 4-6.3(b)(8)	Unless Waived by the Client	324
§ 4-6.3(b)(9)	Joint Client Privilege and Joint Defense Doctrine	325
§ 4-6.3(c)	Exceptions to the Attorney-Client Privilege	326
§ 4-6.3(c)(1)	Crime-Fraud Exception	327
§ 4-6.3(c)(2)	Identity of Client and Payment of Fees	329
§ 4-6.3(c)(3)	Lawyer-Client Disputes and Lawyer Self-Defense.....	329
§ 4-6.3(c)(4)	Exceptions to Confidentiality Under Ethics Rules and the Independent Protection of the Attorney-Client Privilege.....	330
§ 4-6.4	Attorney Work Product	333
§ 4-6.5	Lawyer’s Duty to Safeguard Confidential Information.....	335
§ 4-6.5(a)	General Duty to Safeguard Confidential Information	335
§ 4-6.5(b)	Use of Modern Communications Technology	335

§ 4-6.5(c)	Inadvertent Disclosure	337
§ 4-6.6	Exceptions to Confidentiality Under Rule 1.6	338
§ 4-6.6(a)	Exceptions as Narrow Departures from Confidentiality.....	338
§ 4-6.6(b)	Lawyer and Client on the Lawyer's Decision to Disclose.....	340
§ 4-6.6(b)(1)	Disclosing to the Client the Ethical Qualifications on Confidentiality.....	340
§ 4-6.6(b)(2)	Consulting with Client Before Lawyer's Disclosure Pursuant to a Confidentiality Exception.....	342
§ 4-6.6(c)	To Prevent Death or Bodily Harm.....	342
§ 4-6.6(d)	To Prevent or Rectify Substantial Economic Harm.....	345
§ 4-6.6(d)(1)	History, Controversy, and Overview of Economic Harm Exceptions.....	345
§ 4-6.6(d)(2)	Strict Standards for Application of Economic Harm Exceptions.....	347
§ 4-6.6(d)(3)	When the Permission to Disclose Economic Harm Becomes a Mandatory Duty.....	348
§ 4-6.6(d)(4)	Counseling the Client Before Disclosure	352
§ 4-6.6(e)	To Obtain Legal Advice About Lawyer Compliance with Ethics Rules	352
§ 4-6.6(f)	For Lawyer Self-Defense and Fee Collection	353
§ 4-6.6(g)	To Comply with Other Law or Court Order.....	354
§ 4-6.6(h)	To Check for Conflicts of Interest	355
CHAPTER 4-7. DUTIES OF LOYALTY: CONFLICTS OF INTEREST AND PROFESSIONAL INDEPENDENCE		357
§ 4-7.1	The General Standard for Conflicts of Interest: Duty of Loyalty and to Protect Confidentiality	357
§ 4-7.2	Checking for Conflicts and Withdrawal for Conflict	359
§ 4-7.3	Lawyer Conflicts with a Client.....	360
§ 4-7.3(a)	Introduction to Lawyer-Client Conflicts	360
§ 4-7.3(b)	Business Transactions with Clients	361
§ 4-7.3(c)	Use of Confidential Information to the Disadvantage of the Client	364
§ 4-7.3(d)	Gifts from Clients and Preparation of Instruments Giving Gifts.....	365
§ 4-7.3(e)	Literary and Media Rights About Representation	366
§ 4-7.3(f)	Financial Assistance to a Client	367
§ 4-7.3(f)(1)	The General Prohibition on Giving or Loaning Money for Living Expenses or Otherwise to a Client.....	367
§ 4-7.3(f)(2)	Advancing Court Costs and Litigation Expenses	369
§ 4-7.3(g)	Compensation from a Person Other than the Client.....	369
§ 4-7.3(h)	Agreements to Limit or Settle Malpractice Claims.....	370
§ 4-7.3(i)	Acquiring a Property Interest in a Client's Claim.....	371
§ 4-7.3(j)	Sexual Relations with a Client	372
§ 4-7.3(k)	Family or Romantic Relationship with Lawyer for Adverse Party	373
§ 4-7.3(l)	Imputation of Lawyer-Client Conflicts.....	374
§ 4-7.4	Concurrent Client Conflicts	375
§ 4-7.4(a)	Introduction to Client-Client Concurrent Conflicts.....	375
§ 4-7.4(b)	Direct Adversity Conflicts of Interest.....	375
§ 4-7.4(b)(1)	Nature and Purpose of the Direct Adversity Conflict Rule.....	375

§ 4-7.4(b)(2)	Clients Engaged in Economic Competition	377
§ 4-7.4(c)	Materially-Limited Representation Conflicts of Interest.....	377
§ 4-7.4(c)(1)	Nature of the Materially-Limited Conflict Rule	377
§ 4-7.4(c)(2)	Lawyer Personal Interest Conflicts	379
§ 4-7.4(c)(3)	Representing Multiple Clients in a Criminal Matter	381
§ 4-7.4(c)(4)	Representing Multiple Clients in Civil Litigation	383
§ 4-7.4(c)(5)	Aggregate Settlement of Claims Involving Multiple Clients	386
§ 4-7.4(c)(6)	Representing Multiple Clients in a Non-Litigation Matter	389
§ 4-7.4(c)(7)	Joint Representation, Withdrawal or Termination, and Confidentiality.....	390
§ 4-7.4(c)(8)	Conflicts of Interest in the Insurance Defense Context	392
§ 4-7.4(c)(9)	Positional Conflicts of Interest.....	397
§ 4-7.5	Successive Client Conflicts	399
§ 4-7.5(a)	Introduction to the Successive Conflict Rule	399
§ 4-7.5(b)	Successive Conflicts When the Matters Are the Same.....	399
§ 4-7.5(c)	Successive Conflicts When the Matters Are Substantially Related.....	400
§ 4-7.5(d)	Changing a Current Client into a Former Client: The “Hot Potato” Scenario	402
§ 4-7.5(e)	The Prohibition on Using or Revealing Confidential Information from a Former Client Representation	403
§ 4-7.6	Imputation of Conflicts of Interest Within a Firm	404
§ 4-7.6(a)	The General Rule of Imputed Disqualification to All Lawyers in a Law Firm	404
§ 4-7.6(b)	Imputed Disqualification When a Lawyer Joins or Leaves a Law Firm (The Migrating Lawyer).....	406
§ 4-7.6(b)(1)	Whether the Incoming Lawyer Is Personally Disqualified	406
§ 4-7.6(b)(2)	Ethical Screening of a Personally-Disqualified Lawyer to Avoid Imputed Disqualification	407
§ 4-7.6(b)(3)	Removal of Imputed Disqualification When Personally- Prohibited Lawyer Leaves the Firm	411
§ 4-7.7	Informed Consent by Client to Conflict	413
§ 4-7.7(a)	Introduction to Informed Consent Conflict Waivers	413
§ 4-7.7(b)	The Meaning of Informed Consent to Waive a Conflict	416
§ 4-7.7(c)	Client Consent Confirmed in Writing	417
§ 4-7.7(d)	The Continuing Duty of Competent and Diligent Representation....	418
§ 4-7.7(e)	Nonconsentable Conflicts	418
§ 4-7.7(f)	Advance Conflict Waivers	420
§ 4-7.8	Special Conflicts Rules for Government Employees, Judges, Arbitrators, Mediators, and Third-Party Neutrals	421
§ 4-7.8(a)	Special Conflict Rules for Former and Current Government Employees	421
§ 4-7.8(a)(1)	Conflict of Interest Rules for Former Government Officers and Employees	421
§ 4-7.8(a)(2)	Imputed Disqualification in Context of Former Government Officers and Employees	425
§ 4-7.8(a)(3)	Conflict of Interest Standard for Current Government Officers and Employees	427

§ 4-7.8(b)	Special Conflict Rules for Former and Current Judges, Law Clerks, Arbitrators, Mediators, and Third-Party Neutrals	428
§ 4-7.8(b)(1)	Conflict of Interest Rules for Former Judges, Law Clerks, Arbitrators, Mediators, and Third-Party Neutrals.....	428
§ 4-7.8(b)(2)	Conflict of Interest Rules for Current Judges, Law Clerks, Arbitrators, Mediators, and Third-Party Neutrals.....	429
§ 4-7.9	Maintaining Professional Independence.....	430
§ 4-7.9(a)	Avoiding Financial Entanglements with Nonlawyers	430
§ 4-7.9(b)	The Prohibition on Sharing Legal Fees with Nonlawyers	431
§ 4-7.9(b)(1)	The General Rules Prohibiting Sharing Legal Fees with Nonlawyers.....	431
§ 4-7.9(b)(2)	The Exception for Payments by a Firm to Estate or Survivors of a Deceased Lawyer	431
§ 4-7.9(b)(3)	The Exception for Payment of the Purchase Price of Sale of a Practice of a Deceased Lawyer	432
§ 4-7.9(b)(4)	The Exception for a Compensation or Retirement Plan for Nonlawyer Employees	432
§ 4-7.9(b)(5)	The Exception for Sharing Court-Awarded Fees with Nonprofit Organizations	433
§ 4-7.9(c)	The Bar on Practicing Law with Nonlawyers.....	436
§ 4-7.9(c)(1)	The Traditional (and Persisting) Bar on Practicing in a Partnership or Through Other Business Associations Including Control by Nonlawyers	436
§ 4-7.9(c)(2)	Employing Other Professionals and Assistants.....	437
§ 4-7.9(c)(3)	Lawyer Employed by Client as House Counsel	438
§ 4-7.9(d)	The Prohibition on Restricting Right to Practice	438
§ 4-7.9(d)(1)	The General Prohibition on Law Firm Agreements Restricting the Right to Practice and the Exception for Retirement Benefits.....	438
§ 4-7.9(d)(2)	The Prohibition on Settlement Agreements Restricting a Lawyer's Right to Practice.....	441
CHAPTER 4-8. DUTIES TO ORGANIZATION/ENTITY CLIENTS.....		443
§ 4-8.1	Introduction to Lawyers and Organization/Entity Clients.....	443
§ 4-8.2	Responsibilities During the Formation of an Entity.....	444
§ 4-8.3	Confidentiality and Attorney-Client Privilege for a Private Entity Client ...	445
§ 4-8.3(a)	Determining Who Speaks for the Client for Purposes of the Privilege.....	445
§ 4-8.3(a)(1)	Identifying the Client for Privileged Communications	446
§ 4-8.3(a)(2)	Identifying the Client for Authority to Waive the Privilege ...	448
§ 4-8.3(b)	Denying the Privilege to Ordinary Business Matters (The Ruse Abuse)	449
§ 4-8.4	Protecting the Entity's Attorney-Client Relationship from Outside Interference (The "No-Contact" Rule for Entities)	454
§ 4-8.4(a)	Defining "Represented Person" for Entities in Applying the "No-Contact" Rule	454
§ 4-8.4(b)	Contacting Former Employees of an Entity.....	456

§ 4-8.4(c)	Limitations on Communications with Current or Former Constituents of an Entity	457
§ 4-8.4(c)(1)	Not Suggesting Lawyer Neutrality	458
§ 4-8.4(c)(2)	Not Violating Organization's Rights (Confidentiality)	458
§ 4-8.5	The Lawyer Responding to the Client's Duly-Authorized Constituents.....	458
§ 4-8.6	The Lawyer's Responsibilities When Unlawful Conduct or Internal Dissension Arises Within an Organization.....	460
§ 4-8.6(a)	Introduction to the Problem of Constituent Misconduct Threatening the Organization	460
§ 4-8.6(b)	Triggering the Lawyer's Duty to Proceed in the Best Interests of the Organization	461
§ 4-8.6(b)(1)	Lawyer's Knowledge of Illegal Conduct.....	461
§ 4-8.6(b)(2)	Corporate Constituent Acting in Violation of Law	461
§ 4-8.6(b)(3)	Substantial Injury Is Likely	462
§ 4-8.6(c)	Addressing the Problem Within the Organizational Structure.....	462
§ 4-8.6(d)	Disclosing Confidential Information to Correct the Problem	464
§ 4-8.6(e)	Prohibition on Disclosure by Lawyer Retained to Investigate or Defend.....	465
§ 4-8.6(f)	Lawyer's Responsibility When Discharged or Withdrawing	466
§ 4-8.6(g)	The Problem of the Miscreant Constituent and the Lawyer's Duty of Diligence to the Organization	466
§ 4-8.6(h)	The Lawyer's Responsibilities When Serious Conflicts Arise Among Constituents of the Organization	467
§ 4-8.7	Dual Representation of Organization and Individual Constituent.....	468
§ 4-8.8	Government Clients	470
§ 4-8.8(a)	The Lawyer's Responsibilities to a Government or Public Office Client	470
§ 4-8.8(b)	The Attorney-Client Privilege in the Government Context.....	471
§ 4-8.8(c)	Identifying the Government Client and Litigating Authority.....	472
CHAPTER 4-9. DUTIES OF ETHICAL ADVOCACY.....		475
§ 4-9.1	Introduction to Ethics and Advocacy	475
§ 4-9.2	The Classic Tension Between the Duty of the Zealous Advocate and the Officer of the Court.....	476
§ 4-9.3	Ethical Duties in Presenting Claims or Contentions in Litigation.....	481
§ 4-9.3(a)	Presenting Only Meritorious Claims and Contentions in Civil Litigation.....	481
§ 4-9.3(b)	Putting the Prosecution to Its Proof in Criminal Proceedings	484
§ 4-9.4	Duties to Advance the Resolution of Disputes.....	486
§ 4-9.4(a)	Expediting Litigation and Avoiding Unreasonable Delay	486
§ 4-9.4(b)	Conduct Prejudicial to the Administration of Justice	487
§ 4-9.4(b)(1)	General Conduct Prejudicial to the Administration of Justice	487
§ 4-9.4(b)(2)	Manifestations of Bias Prejudicial to the Administration of Justice and Not Constituting Legitimate Advocacy	488
§ 4-9.4(c)	Using Means That Are Intended Solely to Embarrass, Delay, or Burden Another Person.....	490
§ 4-9.4(c)(1)	Seeking Advantage by Humiliating, Degrading, or Oppressing Another	490

§ 4-9.4(c)(2) Threatening or Promising to Withhold Report of Criminal Wrongdoing.....491

§ 4-9.5 Duties of Truthfulness and Candor by Lawyer Before the Tribunal493

 § 4-9.5(a) Truthfulness as a Fundamental Expectation and Candor as a Special Requirement in Certain Situations493

 § 4-9.5(b) Duty of Truthfulness When Lawyer Makes Statements of Fact494

 § 4-9.5(c) Limited Duty of Candor When Lawyer Makes Legal Arguments495

 § 4-9.5(d) Duty of Candor When Lawyer Participates in an *Ex Parte* Proceeding497

 § 4-9.5(e) Duty of Lawyer to Obey Court Rules and Rulings, Unless Openly Challenging Validity.....499

§ 4-9.6 Obtaining, Discovering, and Preserving Evidence for Civil Proceedings500

 § 4-9.6(a) General Duties on Access to Evidence in Civil Matters500

 § 4-9.6(b) Ethical Duties of Proper Requests and Responses in Civil Discovery501

 § 4-9.6(b)(1) General Ethical Expectations in Discovery501

 § 4-9.6(b)(2) Requests for Discovery502

 § 4-9.6(b)(3) Responses to Discovery503

 § 4-9.6(c) Preservation of Potential Evidence503

 § 4-9.6(c)(1) Overview of the Law of Spoliation of Evidence504

 § 4-9.6(c)(2) Destruction of Documents Pursuant to a Document Retention Policy507

 § 4-9.6(c)(3) 2015 Amendment to the Federal Rules of Civil Procedure on Preservation of Electronically-Stored Information (ESI)507

 § 4-9.6(c)(4) The Duty of Counsel in Preserving and Producing Evidence in Discovery510

 § 4-9.6(d) Prohibition on Using Methods of Obtaining Evidence That Violate Another’s Legal Rights512

 § 4-9.6(e) Lawyer’s Obligations on Unsolicited Receipt of Another’s Privileged or Confidential Materials515

 § 4-9.6(e)(1) Distinguishing Unsolicited Receipt from Encouraged Procurement of Protected Materials515

 § 4-9.6(e)(2) Lawyer’s Receipt of Inadvertently Transmitted Protected Materials.....516

 § 4-9.6(e)(3) Lawyer’s Receipt of Protected Materials Taken by Another Without Authority.....520

 § 4-9.6(e)(4) The Problem of Metadata526

 § 4-9.6(f) Covert Activity to Investigate Violations of the Law or Gather Intelligence.....528

 § 4-9.6(g) General Duty Not to Request Another Person to Withhold Information from Another Party.....531

§ 4-9.7 Ethical Issues Regarding Collection and Retention of Evidence in Criminal Proceedings532

 § 4-9.7(a) Introduction to Ethical Issues Regarding Evidence in Criminal Matters532

 § 4-9.7(b) The Law on the Duty to Preserve Evidence534

 § 4-9.7(b)(1) A Summary of State Laws on Obstruction of Justice534

 § 4-9.7(b)(2) The Traditional Federal Approach to Obstruction of Justice: §§ 1503 and 1512.....536

§ 4-9.7(b)(3)	Anticipatory Obstruction of Justice: Sarbanes-Oxley § 1519	537
§ 4-9.7(b)(4)	Safe Harbor for Legal Representation	541
§ 4-9.7(b)(5)	Treatment of Contraband That Is Not Evidence in a Reasonably Anticipated Proceeding.....	542
§ 4-9.7(b)(6)	Advising the Client in a Situation of Uncertainty	547
§ 4-9.7(c)	The Law on Observation and Examination of Evidence	549
§ 4-9.7(c)(1)	Defense Lawyer Observing Evidence Without Taking Possession	549
§ 4-9.7(c)(2)	Defense Lawyer's Right to Examine Evidence.....	550
§ 4-9.7(c)(3)	Disposition of Evidence by the Defense Lawyer After Examination	553
§ 4-9.7(c)(4)	Preserving Confidentiality if Defense Lawyer Deliver Evidence to Law Enforcement.....	557
§ 4-9.7(d)	Evidence Delivered to Defense Lawyer	558
§ 4-9.7(e)	The Tricky Problem of Contraband	561
§ 4-9.7(f)	Defense Lawyer's Retention of Evidence with Contingent Notice to Law Enforcement.....	564
§ 4-9.7(f)(1)	The Mistaken Notion That a Lawyer Has a General Duty to Deliver Evidence to Law Enforcement	564
§ 4-9.7(f)(2)	The Gillers Solution: An Evidence Registry.....	565
§ 4-9.7(f)(3)	Other Approaches Toward Evidence After Examination	566
§ 4-9.8	Duties Regarding Presentation of Evidence	567
§ 4-9.8(a)	The Prohibition on Presenting What Is Known to Be False Evidence and the Problem of Client Perjury.....	567
§ 4-9.8(a)(1)	The Problem of Client Perjury	568
§ 4-9.8(a)(2)	The Narrative Statement Approach	569
§ 4-9.8(b)	Discretion to Decline to Present What Is Reasonably Believed to Be False Evidence	570
§ 4-9.8(c)	Duty to Take Remedial Measures to Correct False Evidence Notwithstanding Confidentiality	571
§ 4-9.8(d)	The Standard of Knowledge as Applied to the False Evidence Problem.....	574
§ 4-9.8(e)	How to Take Reasonable Steps to Remedy False Evidence.....	576
§ 4-9.8(f)	The Duration of the Duty to Remedy False Evidence	578
§ 4-9.8(g)	Closing Thoughts on the Rule Mandating Disclosure of False Evidence, Including Client Perjury	579
§ 4-9.8(h)	Duty to Counteract Client Fraudulent or Criminal Conduct Before the Tribunal	580
§ 4-9.8(i)	Witness Preparation Versus Witness Coaching	581
§ 4-9.8(j)	Improper Inducements to a Witness	585
§ 4-9.9	Behavior During and After Trial.....	587
§ 4-9.9(a)	Disruptive Behavior at Trial.....	587
§ 4-9.9(b)	Improper Allusions and Expression of Personal Opinions by Lawyer	588
§ 4-9.9(b)(1)	Improper Allusions to Inadmissible Evidence by Lawyer.....	588
§ 4-9.9(b)(2)	Improper Personal Vouching and Opinions by Lawyer.....	589
§ 4-9.9(c)	Improper Influence on a Tribunal	589
§ 4-9.9(d)	<i>Ex Parte</i> Communications with a Tribunal (Judge or Jury).....	590

§ 4-9.9(e)	Communications with Jury After Discharge	592
§ 4-9.10	The Advocate-Witness Rule	594
§ 4-9.10(a)	The Advocate-Witness Rule and Avoiding Confusion of the Lawyer's Role	594
§ 4-9.10(b)	The "Necessary Witness" Standard for the Advocate-Witness Rule.....	596
§ 4-9.10(c)	Exceptions to the Advocate-Witness Rule.....	598
§ 4-9.10(c)(1)	Uncontested Issues	598
§ 4-9.10(c)(2)	Nature and Value of Legal Services	598
§ 4-9.10(c)(3)	Substantial Hardship on the Client.....	599
§ 4-9.10(d)	Conflicts of Interest Arising from a Lawyer's Testimony as a Witness	599
§ 4-9.11	Extrajudicial Statements by Lawyer	601
§ 4-9.11(a)	Introduction: Balancing the Right to Freedom of Expression Against the Right to a Fair Trial	601
§ 4-9.11(b)	The Prohibition on Extrajudicial Statements Likely to Prejudice an Adjudicative Proceedings	603
§ 4-9.11(b)(1)	The Standard of a Substantial Likelihood of Material Prejudice	603
§ 4-9.11(b)(2)	The Likelihood of Prejudice and the Nature of the Proceeding	604
§ 4-9.11(c)	The Prejudicial Impact of Types of Statements	605
§ 4-9.11(c)(1)	Statements Least Likely to be Prejudicial	605
§ 4-9.11(c)(2)	Statements Raising Greatest Risk of Prejudice	606
§ 4-9.11(c)(3)	Special Risk Posed by Statements Made by Prosecutors	609
§ 4-9.11(d)	The Right of Reply to Correct Prejudice Caused by Another.....	612
§ 4-9.11(e)	Other Duties and Factors Implicated by Extrajudicial Statements	614
§ 4-9.11(f)	The Lawyer's Responsibility for Prejudicial Extrajudicial Statements by Others.....	616
§ 4-9.12	The Heightened Ethical Duties of Lawyers for the Sovereign Government—With Special Attention to Prosecutors.....	617
§ 4-9.12(a)	Introduction to the Ethical Responsibilities of the Prosecutor and Government Litigator	617
§ 4-9.12(a)(1)	The Duty of a Prosecutor to "Do Justice"	617
§ 4-9.12(a)(2)	The Heightened Expectation for the Government Civil Litigator in Competence and Candor.....	619
§ 4-9.12(a)(3)	Federal Government Lawyers and State Ethics Rules	621
§ 4-9.12(b)	The Prosecutor's Ethical Duties in Charging and Investigation	622
§ 4-9.12(c)	The Government Lawyer's Duty to Respect the Rights of Others, Especially the Right to Counsel.....	624
§ 4-9.12(c)(1)	Prosecutor's Duties to an Unrepresented Accused	624
§ 4-9.12(c)(2)	The "No-Contact" Rule as Applied to Law Enforcement Investigations by Government Lawyers.....	626
§ 4-9.12(c)(3)	Interception by the Government of Privileged Communications.....	632
§ 4-9.12(c)(4)	Demand by Government of Waiver of Privileged Communications—The Corporate Investigation Scenario	633

§ 4-9.12(c)(5) Restrictions on Issuance by Prosecutors of Subpoenas to Lawyers.....	636
§ 4-9.12(d) Prosecutor’s Duties of Disclosure.....	640
§ 4-9.12(d)(1) Prosecutor’s Duty to Disclose Exculpatory and Mitigating Evidence.....	640
§ 4-9.12(d)(2) Prosecutor’s Duties Regarding Wrongful Convictions.....	642
§ 4-9.12(e) Closing Thoughts: The Prosecutor’s General Duty of Candor and Protection of the Truth-Finding Function in Court.....	644
§ 4-9.13 The Duties of the Advocate in Nonadjudicative Proceedings.....	646
CHAPTER 4-10. DUTIES AS EVALUATOR OR THIRD-PARTY NEUTRAL....	649
§ 4-10.1 Introduction: The Lawyer’s Roles as Evaluator and Third-Party Neutral....	649
§ 4-10.2 The Lawyer’s Role as Evaluator.....	649
§ 4-10.2(a) General Principles of Lawyer of Evaluation of Client Matters.....	649
§ 4-10.2(b) Preparation of Client Evaluation for Use by Another Person.....	650
§ 4-10.2(c) Ethical Duties When Evaluation Is Adverse to the Client.....	651
§ 4-10.2(d) Confidentiality and Evaluation of Client Matter.....	652
§ 4-10.2(e) Other Ethical and Legal Duties Regarding Client Evaluation.....	653
§ 4-10.3 The Lawyer’s Role as Third-Party Neutral.....	653
CHAPTER 4-11. RESPECT FOR OTHER PERSONS.....	657
§ 4-11.1 Introduction: The Lawyer’s Duties to Respect the Rights and Dignity of Other Persons.....	657
§ 4-11.2 The Lawyer’s Duty of Truthfulness.....	658
§ 4-11.2(a) The Lawyer’s Basic Duty of Truthfulness in Dealings with Others.....	658
§ 4-11.2(b) The Lawyer Must Avoid False Statements of Material Fact or Law to Others.....	659
§ 4-11.2(c) The Lawyer Must Avoid Assisting the Client in Crime or Fraud.....	661
§ 4-11.3 Communications with a Represented Person.....	663
§ 4-11.3(a) The “No-Contact” Rule: Protecting the Attorney-Client Relationship from Outside Interference.....	663
§ 4-11.3(b) Communications Between Represented Persons.....	665
§ 4-11.3(c) The No-Contact Rule Applies Only When Lawyer Is Representing a Client.....	667
§ 4-11.3(d) The No-Contact Rule Applies Only to Communications on the Subject of Representation.....	667
§ 4-11.3(e) The No-Contact Rule Applies Only When the Lawyer Knows the Person Is Represented.....	669
§ 4-11.3(f) Consent by Represented Person’s Counsel to Contact by Another Lawyer.....	670
§ 4-11.3(g) Exceptions to the No-Contact Rule.....	671
§ 4-11.3(g)(1) Consent by the Person’s Lawyer.....	671
§ 4-11.3(g)(2) Authorized by Law.....	672
§ 4-11.3(g)(3) Court Order.....	672
§ 4-11.3(h) The No-Contact Rule and the Right to Petition Government.....	673
§ 4-11.4 Communications with an Unrepresented Person.....	675
§ 4-11.4(a) Avoiding Suggestion of Lawyer’s Neutrality.....	675
§ 4-11.4(b) Correcting Misunderstanding About Lawyer’s Role.....	676

§ 4-11.4(c) Giving of Legal Advice by Lawyer	676
CHAPTER 4-12. DUTIES OF A LAWYER IN A LAW FIRM	679
§ 4-12.1 Introduction to the Responsibilities of a Lawyer in a Law Firm	679
§ 4-12.2 The Responsibilities of a Managing or Supervising Lawyer over Other Lawyers	680
§ 4-12.2(a) The Duty of a Managing or Supervising Lawyer on Ethical Guidance of Other Lawyers.....	680
§ 4-12.2(a)(1) The Duty of a Managing Lawyer in a Firm.....	680
§ 4-12.2(a)(2) The Duty of a Supervising Lawyer	681
§ 4-12.2(a)(3) Reasonable Efforts to Ensure Ethical Conduct.....	681
§ 4-12.2(a)(4) Managing or Supervising Lawyer Responsibility Is Not Vicarious Liability.....	682
§ 4-12.2(b) Lawyer Responsibility for the Misconduct of Another Lawyer.....	683
§ 4-12.3 The Responsibilities of a Subordinate Lawyer	684
§ 4-12.4 The Responsibilities of a Managing or Supervising Lawyer over Nonlawyer Assistants.....	685
CHAPTER 4-13. PUBLIC-REGARDING ACTIVITIES, DUTIES, AND RIGHTS	689
§ 4-13.1 Lawyer Responsibilities on Bar Admission and Discipline	689
§ 4-13.1(a) The Duty to Report Professional Misconduct	689
§ 4-13.1(a)(1) Protecting the Legal Profession by Reporting Misconduct.....	689
§ 4-13.1(a)(2) Required Knowledge of Violation for Duty to Report	690
§ 4-13.1(a)(3) Duty to Report When Violation Raises Substantial Question on Fitness	690
§ 4-13.1(b) Confidentiality as an Exception to the Duty to Report	690
§ 4-13.1(c) Protection of Information Gained Within an Approved Lawyers Assistance Program	692
§ 4-13.1(d) Duty of Candor with Respect to Regulation of the Bar	693
§ 4-13.1(e) The Privilege Against Self-Incrimination, Confidentiality, and Unlawful Demands	694
§ 4-13.1(e)(1) Privilege Against Self-Incrimination	694
§ 4-13.1(e)(2) Client Confidentiality	694
§ 4-13.1(e)(3) Lawful Demand for Information	695
§ 4-13.2 Lawyer Involvement in Law Reform.....	695
§ 4-13.2(a) Lawyer's General Freedom to Engage in Law Reform Notwithstanding Client Interest	695
§ 4-13.2(b) Law Reform Activities and Conflicts of Interest.....	696
§ 4-13.2(c) Client's Right to Discharge Lawyer Based on Law Reform Activities.....	697
§ 4-13.2(d) Duty of Lawyer to Law Reform Organization.....	697
§ 4-13.3 Lawyer Commentary on Judges, Legal Officers, and Candidates for Judicial or Legal Office	698
§ 4-13.3(a) The Value of Informed Commentary by Lawyers on Legal Officers and Judges.....	698
§ 4-13.3(b) The Disciplinary Standard of Knowing Falsity or Reckless Disregard for Truth	699
§ 4-13.3(c) Lawyer Speech in the Courtroom About Judges	701

§ 4-13.3(d) Limiting Discipline to False Factual Statements About Legal Officers or Judges	702
§ 4-13.4 Providing Legal Services to the Disadvantaged	703
§ 4-13.4(a) The Moral Obligation and Professional Responsibility to Provide Pro Bono Legal Services	703
§ 4-13.4(b) Aspirational Expectations for Pro Bono Legal Services	705
§ 4-13.4(c) Providing Short-Term Limited Pro Bono Services and Conflict of Interest Rules	706
§ 4-13.4(d) The Lawyer's Duty to Accept Appointment to Represent a Client Absent Good Cause	708
§ 4-13.4(d)(1) Court Appointment of Lawyer to Represent a Person	708
§ 4-13.4(d)(2) Good Cause to Decline Appointment	709
§ 4-13.4(e) Lawyer Serving in Governance with a Legal Services Organization and Recusal in Matters Raising a Conflict of Interest	711

PART FIVE. LEGAL MALPRACTICE

CHAPTER 5-1. INTRODUCTION TO LEGAL MALPRACTICE LAW	715
§ 5-1.1 The Role and Nature of Legal Malpractice Law	715
§ 5-1.2 The Rise in Legal Malpractice Law	716
§ 5-1.3 The Costs of Legal Malpractice	718
§ 5-1.4 Overview of the Theories of Liability	719
§ 5-1.4(a) Culpability	719
§ 5-1.4(b) Differentiating Claims in the Same Lawsuit	719
§ 5-1.5 Consequences of Classifying Theories of Liability	720
§ 5-1.5(a) Pleadings and Proof	720
§ 5-1.5(b) Scope of Liability	721
§ 5-1.5(c) Defenses	721
§ 5-1.5(d) Legal Malpractice Insurance	722
§ 5-1.5(e) Vicarious Liability	722
§ 5-1.5(f) Remedies	723
§ 5-1.5(g) Discharge in Bankruptcy	723
§ 5-1.6 Status of the Plaintiff	723
§ 5-1.7 Differentiating Malpractice and Discipline	724
§ 5-1.7(a) Purposes and Prosecutor	724
§ 5-1.7(b) Procedures and Decision-Makers	725
§ 5-1.7(c) Application of Ethics Rules	725
CHAPTER 5-2. NEGLIGENCE	727
§ 5-2.1 Duty to Exercise Reasonable Care	727
§ 5-2.1(a) To Whom Is a Duty Owed?	727
§ 5-2.1(a)(1) Three Kinds of Attorney-Client Relationship	728
§ 5-2.1(a)(1)(A) Court Appointment	728
§ 5-2.1(a)(1)(B) Express Agreement	729
§ 5-2.1(a)(1)(C) Inadvertent Clients	729
§ 5-2.1(a)(1)(C)(i) Common Scenarios	729
§ 5-2.1(a)(1)(C)(ii) Request for Legal Services	730
§ 5-2.1(a)(1)(C)(iii) Reasonable Reliance	731
§ 5-2.1(a)(1)(C)(iv) Prevention	732

§ 5-2.1(a)(2)	Appearance Before a Tribunal	733
§ 5-2.1(a)(3)	Attorney-Client Relationship Based on Estoppel	734
§ 5-2.1(a)(4)	Voluntary Assumption of Duty	734
§ 5-2.1(a)(5)	Prospective Clients.....	735
§ 5-2.1(a)(6)	Class Members	736
§ 5-2.1(b)	Scope of Representation	736
§ 5-2.1(b)(1)	Defining the Scope of Representation.....	737
§ 5-2.1(b)(2)	Changes in the Scope of Representation	737
§ 5-2.1(b)(3)	Unreasonable Limits on the Scope of Representation.....	738
§ 5-2.1(b)(4)	Responsibility for Closely Related Matters	738
§ 5-2.1(b)(5)	Termination of the Attorney-Client Relationship.....	739
§ 5-2.1(b)(5)(A)	Post-Termination Loyalty	740
§ 5-2.1(b)(5)(B)	Termination of Authority	741
§ 5-2.2	Breach of Duty	741
§ 5-2.2(a)	The Standard of Care	742
§ 5-2.2(a)(1)	Specialists.....	743
§ 5-2.2(a)(2)	Representations of Greater Competence	743
§ 5-2.2(a)(3)	Disclosure of Inexperience.....	744
§ 5-2.2(a)(4)	Malpractice by Laypersons.....	744
§ 5-2.2(a)(5)	Lawyers with Disabilities.....	745
§ 5-2.2(b)	No Good Faith Defense.....	746
§ 5-2.2(c)	Risk Balancing and Economic Analysis	746
§ 5-2.2(d)	Specific Duties.....	747
§ 5-2.2(d)(1)	Competence	748
§ 5-2.2(d)(2)	Duty to Recommend a Specialist.....	748
§ 5-2.2(d)(3)	Diligence	749
§ 5-2.2(e)	Exercise of Judgment	749
§ 5-2.2(e)(1)	Room for Discretion.....	749
§ 5-2.2(e)(2)	The “Mere Error of Judgment” Fallacy	750
§ 5-2.2(e)(3)	Unsettled Questions.....	751
§ 5-2.2(e)(4)	Novel Theories, Trends, and Other Jurisdictions	752
§ 5-2.2(f)	Expert Testimony	752
§ 5-2.2(f)(1)	Necessary to Establish the Standard of Care	752
§ 5-2.2(f)(2)	Exception for Obvious Negligence.....	753
§ 5-2.2(f)(3)	Expert Affidavit Requirements	754
§ 5-2.2(f)(4)	Admissibility of Expert Testimony	755
§ 5-2.2(f)(5)	Geographic Frame of Reference for Expert Testimony	756
§ 5-2.2(f)(5)(A)	No Locality Rule	757
§ 5-2.2(f)(5)(B)	International Legal Malpractice.....	757
§ 5-2.2(f)(6)	The Role of Legal Malpractice Experts.....	759
§ 5-2.2(f)(6)(A)	Duties and Compensation	759
§ 5-2.2(f)(6)(B)	Independence Versus Partisanship	760
§ 5-2.2(f)(6)(C)	Non-Testifying Experts	761
§ 5-2.2(f)(6)(D)	Honesty and Effectiveness	762
§ 5-2.2(g)	Expert Testimony on Causation	762
§ 5-2.2(g)(1)	Sometimes Permitted.....	762
§ 5-2.2(g)(2)	Sometimes Required	763
§ 5-2.2(g)(3)	Sometimes Prohibited.....	764
§ 5-2.2(h)	Experts’ Reliance on Ethics Rules	764

§ 5-2.2(i)	Experts' Ignorance of Ethics Rules	765
§ 5-2.2(j)	Experts' Inconsistency with Ethics Rules	765
§ 5-2.2(k)	Conclusory Expert Testimony	766
§ 5-2.2(l)	Expert Witness Liability	766
§ 5-2.2(m)	Negligence <i>Per Se</i> in Legal Malpractice	766
§ 5-2.2(m)(1)	How Statutes Set the Standard of Care	767
§ 5-2.2(m)(2)	Statutes Disclaiming a Civil Cause of Action	767
§ 5-2.2(m)(3)	Restatement Position on Statutory Standards	768
§ 5-2.2(m)(4)	Statutes Imposing Duties Not Unique to Lawyers	768
§ 5-2.2(n)	Informed Consent in Legal Malpractice	769
§ 5-2.3	Causation	772
§ 5-2.3(a)	Factual Causation.....	772
§ 5-2.3(a)(1)	The "But For" Test	772
§ 5-2.3(a)(1)(A)	Difficult to Establish	773
§ 5-2.3(a)(1)(B)	Proving an Alternative Would Have Occurred	774
§ 5-2.3(a)(1)(C)	Prior Judge and Jury May Not Testify.....	775
§ 5-2.3(a)(1)(D)	The "But For" Test and Multiple Tortfeasors	775
§ 5-2.3(a)(1)(E)	Independently Sufficient Causes	776
§ 5-2.3(a)(2)	"Trial Within a Trial" Analysis	776
§ 5-2.3(a)(2)(A)	Factual Complexity.....	777
§ 5-2.3(a)(3)	The "More Favorable Result" Standard.....	778
§ 5-2.3(a)(4)	Loss of a Chance.....	778
§ 5-2.3(a)(5)	Shifting the Burden of Proof on Causation	780
§ 5-2.3(a)(6)	Tortious Spoliation of Causation Evidence	781
§ 5-2.3(a)(6)(A)	Legitimate Destruction of Evidence	782
§ 5-2.3(a)(7)	Concerted Action Liability.....	782
§ 5-2.3(b)	Proximate Causation	783
§ 5-2.3(b)(1)	In General.....	783
§ 5-2.3(b)(2)	Superseding Causation and Shifting Responsibility	784
§ 5-2.3(b)(2)(A)	Intervening Negligent Conduct	784
§ 5-2.3(b)(2)(B)	Failure by the Client to Discover Malpractice	785
§ 5-2.3(b)(2)(C)	Subsequent Counsel's Failure to Act.....	785
CHAPTER 5-3. BREACH OF FIDUCIARY DUTY	789	
§ 5-3.1	Lawyers as Fiduciaries	789
§ 5-3.1(a)	A Different Point of Reference	789
§ 5-3.1(b)	Fiduciary Duty Versus Negligence	789
§ 5-3.1(c)	Disloyalty Versus Lack of Care.....	790
§ 5-3.1(d)	Similarities to Negligence	791
§ 5-3.1(e)	Differences from Negligence	792
§ 5-3.2	The "Substantial Factor" Test for Factual Causation.....	792
§ 5-3.2(a)	No Speculation	793
§ 5-3.3	Disclosure Obligations.....	793
§ 5-3.3(a)	"Absolute and Perfect Candor".....	793
§ 5-3.3(b)	How Negligence Duties and Fiduciary Duties Mesh.....	795
§ 5-3.3(c)	Limits on Disclosure Obligations.....	795
§ 5-3.4	Fee Forfeiture	796
§ 5-3.4(a)	To Prevent Unjust Enrichment.....	796
§ 5-3.4(b)	Causation of Harm Is Not Required.....	796

§ 5-3.4(c)	Clear and Serious Breach of Duty	797
§ 5-3.4(d)	Does Forfeiture Require Fiduciary Breach?.....	798
§ 5-3.5	Aiding and Abetting a Breach of Fiduciary Duty.....	799
§ 5-3.5(a)	A Dangerous Theory of Liability.....	799
§ 5-3.5(b)	Two Very Different Varieties	799
§ 5-3.5(c)	Tort Principles on Aiding and Abetting	800
§ 5-3.5(d)	Evidence of Knowing Assistance.....	801
§ 5-3.5(e)	Evidence of Substantial Assistance	801
§ 5-3.5(f)	Privileges and Defenses.....	802
§ 5-3.5(g)	Implications for Corporate Policy Making	803
§ 5-3.6	Intra-Firm Fiduciary Duties.....	804
§ 5-3.6(a)	Duties of Partners and Other Law Firm Principles	805
§ 5-3.6(b)	Duties of Associates	805
§ 5-3.6(c)	Movement Between Firms	806
§ 5-3.6(d)	Post-Employment Restrictive Covenants.....	807
CHAPTER 5-4. LIABILITY TO NONCLIENTS	809
§ 5-4.1	Modern Nonclient Litigation	809
§ 5-4.1(a)	The Privity Obstacle	810
§ 5-4.1(b)	Exceptions to Privity	811
§ 5-4.1(c)	Statutory Limits on Nonclient Liability.....	812
§ 5-4.1(d)	Successors-in-Interest	813
§ 5-4.1(d)(1)	Bankruptcy Trustees and Estate Executors or Administrators	813
§ 5-4.1(d)(2)	Mergers and Sales of Assets.....	813
§ 5-4.1(d)(3)	Receivers	814
§ 5-4.2	Fraud on Clients and Nonclients.....	814
§ 5-4.2(a)	Basic Principles of the Law Governing Fraud	814
§ 5-4.2(a)(1)	Common Law Remedies and Other Consequences.....	814
§ 5-4.2(a)(2)	The Elements of Fraud	815
§ 5-4.2(a)(2)(A)	Special Pleading and Proof Requirements.....	816
§ 5-4.2(a)(3)	Scienter	816
§ 5-4.2(a)(3)(A)	Knowledge of Falsity	816
§ 5-4.2(a)(3)(B)	Reckless Disregard for the Truth	816
§ 5-4.2(a)(4)	Materiality and Types of Misrepresentation.....	818
§ 5-4.2(a)(4)(A)	Words Written or Oral.....	818
§ 5-4.2(a)(4)(A)(i)	Words of Qualification	819
§ 5-4.2(a)(4)(B)	Conduct.....	819
§ 5-4.2(a)(4)(C)	Liability for Nondisclosure.....	819
§ 5-4.2(a)(4)(C)(i)	Fiduciary Duty to Speak.....	819
§ 5-4.2(a)(4)(C)(ii)	Half-Truths	820
§ 5-4.2(a)(4)(C)(iii)	Facts Basic to the Transaction	820
§ 5-4.2(a)(4)(C)(iv)	Facts Not Reasonably Discoverable	820
§ 5-4.2(a)(4)(D)	Misrepresentations by Lawyers About Credentials or Experience	821
§ 5-4.2(a)(5)	Opinion Versus Fact	821
§ 5-4.2(a)(5)(A)	“Puffing”	821
§ 5-4.2(a)(5)(B)	Implicit Statements of Fact.....	822
§ 5-4.2(a)(5)(C)	State of Mind.....	822

§ 5-4.2(a)(5)(D) Statements of Law	823
§ 5-4.2(a)(6) Justifiable Reliance	824
§ 5-4.2(a)(6)(A) Statements Known to Be False	824
§ 5-4.2(a)(6)(B) Danger Signals	824
§ 5-4.2(a)(6)(C) Failure to Doubt	824
§ 5-4.2(a)(6)(D) Contractual Disclaimers of Reliance	825
§ 5-4.2(a)(7) Intent to Induce Reliance	825
§ 5-4.2(a)(8) Resulting Damages	825
§ 5-4.2(a)(9) Liability for Aiding and Abetting Fraud	826
§ 5-4.3 Negligent Misrepresentation	826
§ 5-4.3(a) Restatement (Second) of Torts § 552	827
§ 5-4.3(a)(1) Relationship to Voluntary Assumption of Duty	828
§ 5-4.3(b) Limits on the Scope of Liability for Misrepresentation	828
§ 5-4.3(b)(1) Scope of Liability for Fraud	828
§ 5-4.3(b)(1)(A) Commercial Documents	828
§ 5-4.3(b)(1)(B) Public Filings	829
§ 5-4.3(b)(1)(C) Special Reason to Expect Reliance	829
§ 5-4.3(b)(2) Scope of Liability for Negligent Misrepresentation	830
§ 5-4.3(b)(2)(A) The “Near Privity” View	830
§ 5-4.3(b)(2)(B) The Restatement’s “Limited Group” View	831
§ 5-4.3(b)(2)(C) Summary	832
§ 5-4.3(c) Negligent Misrepresentation Based on Silence	832
§ 5-4.3(d) Plaintiff’s Negligence as a Defense	833
§ 5-4.4 Deceptive Trade Practices Acts	833
§ 5-4.4(a) Applicability to Lawyers	833
§ 5-4.4(b) Advantages over Common Law	834
§ 5-4.4(c) DTPA Suits by Nonclients	835
§ 5-4.5 Claims Based on Representation of Fiduciaries	835
§ 5-4.6 Funds and Property of Nonclients	835
§ 5-4.7 Intended Beneficiaries	837
§ 5-4.7(a) Invalid Wills	837
§ 5-4.7(a)(1) Minority View	837
§ 5-4.7(b) Insurers	838
§ 5-4.7(c) Other Intended Beneficiaries	839
§ 5-4.8 Duties to Co-Counsel	841
§ 5-4.8(a) Protecting Fee Interests	841
§ 5-4.9 Liability Related to Litigation	842
§ 5-4.9(a) Malicious Prosecution and Malicious Use of Process	843
§ 5-4.9(a)(1) Elements	843
§ 5-4.9(a)(2) Terminology	844
§ 5-4.9(a)(3) Advice of Counsel Defense and Related Claims Against Lawyers	844
§ 5-4.9(b) Tortious Involvement with Litigation	845
§ 5-4.9(c) Insurer Subrogation Claims	845
§ 5-4.10 Securities Law Violations	846
§ 5-4.10(a) “Aiding and Abetting” and “Scheme” Liability	847
§ 5-4.10(b) Claims Under State Law	847
§ 5-4.11 Fair Debt Collections Practices	848

CHAPTER 5-5. REMEDIES FOR LEGAL MALPRACTICE	851
§ 5-5.1 Compensatory Damages.....	851
§ 5-5.1(a) No Speculation	851
§ 5-5.1(b) Proximately Caused Losses.....	853
§ 5-5.1(c) Emotional Distress Damages	853
§ 5-5.1(d) Harm to Reputation.....	854
§ 5-5.1(e) Attorney’s Fees as Compensatory Damages	854
§ 5-5.1(e)(1) Attorney’s Fees Incurred in the Malpractice Action.....	855
§ 5-5.1(e)(2) Attorney’s Fees Incurred in Earlier Representation	855
§ 5-5.1(e)(3) Attorney’s Fees Not Recovered in Earlier Litigation.....	856
§ 5-5.1(e)(4) Attorney’s Fees Incurred to Remedy or Mitigate Malpractice	856
§ 5-5.1(f) Adjustments to Damages	857
§ 5-5.1(f)(1) Reduction to Present Value	857
§ 5-5.1(f)(2) Prejudgment Interest.....	857
§ 5-5.1(f)(3) Amounts That Would Have Been Spent on Contingent Fees	858
§ 5-5.1(f)(4) Quantum Meruit Offset for the Value of Services Rendered.....	858
§ 5-5.1(g) Collectability	858
§ 5-5.2 Punitive Damages.....	859
§ 5-5.2(a) State Law Limitations.....	859
§ 5-5.2(a)(1) Caps and Bans on Punitive Damages.....	860
§ 5-5.2(a)(2) Partial Forfeiture to the State	861
§ 5-5.2(b) Federal Constitutional Limitations.....	861
§ 5-5.2(b)(1) <i>BMW of North America v. Gore</i>	861
§ 5-5.2(b)(2) <i>State Farm Mutual Automobile Insurance v. Campbell</i>	862
§ 5-5.2(b)(3) Subsequent Supreme Court Cases.....	864
§ 5-5.2(c) Limitations on Punitive Awards in Legal Malpractice Cases	864
§ 5-5.2(d) Vicarious Liability for Punitive Damages.....	865
§ 5-5.2(e) Liability for “Lost Punitive Damages”.....	866
§ 5-5.3 Restitution	866
CHAPTER 5-6. DEFENSES AND OBSTACLES TO RECOVERY	867
§ 5-6.1 In General	867
§ 5-6.2 Defenses Based on the Plaintiff’s Conduct	868
§ 5-6.2(a) Contributory Negligence, Comparative Negligence, and Comparative Fault.....	868
§ 5-6.2(b) Avoidable Consequences and the Failure to Mitigate.....	869
§ 5-6.2(c) Unlawful Conduct.....	870
§ 5-6.2(c)(1) A Defense in Many Guises.....	870
§ 5-6.2(c)(2) Exoneration or Innocence Requirement in Criminal-Defense Malpractice	872
§ 5-6.2(c)(2)(A) Lesser Included Offenses	873
§ 5-6.2(c)(2)(B) Sentencing Errors	873
§ 5-6.2(c)(2)(C) Limits on the Unlawful Conduct Defense	873
§ 5-6.3 Privileges and Immunities Based on the Defendant’s Conduct	874
§ 5-6.3(a) The Absolute Judicial Proceedings Privilege (Litigation Privilege) ...	874
§ 5-6.3(b) Attorney Immunity	876

§ 5-6.3(c)	Absolute Privilege for Truth	877
§ 5-6.3(d)	Qualified Privileges	877
§ 5-6.3(e)	Immunity of Public Defenders and Appointed Lawyers	877
§ 5-6.4	Defenses Arising by Operation of Law	878
§ 5-6.4(a)	Malpractice Statutes of Limitations	879
§ 5-6.4(a)(1)	Accrual of the Cause of Action	881
§ 5-6.4(a)(1)(A)	Occurrence Rule	881
§ 5-6.4(a)(1)(B)	Damage Rule	881
§ 5-6.4(a)(2)	Tolling	882
§ 5-6.4(a)(2)(A)	Discovery Rule	883
§ 5-6.4(a)(2)(B)	Continuous Representation Rule	885
§ 5-6.4(a)(2)(B)(i)	Determining Continuity	886
§ 5-6.4(a)(2)(C)	Fraudulent Concealment	887
§ 5-6.4(a)(2)(D)	Agreement of the Parties	887
§ 5-6.4(a)(2)(D)(i)	Shortening the Filing Period	887
§ 5-6.4(a)(2)(E)	Pendency of Other Litigation	888
§ 5-6.4(a)(2)(F)	Equitable Estoppel	888
§ 5-6.4(a)(2)(G)	The Continuing Tort Doctrine	889
§ 5-6.4(a)(3)	Statutes of Repose	889
§ 5-6.4(b)	Non-Assignability of Legal Malpractice Claims	890
§ 5-6.4(c)	Joint Liability and Reimbursement	891
§ 5-6.4(c)(1)	Allocation of Fault to Other Persons	891
§ 5-6.4(c)(2)	Contribution	892
§ 5-6.4(c)(3)	Indemnity	893
§ 5-6.4(c)(4)	Claims Involving Successive Counsel or Co-Counsel	894
§ 5-6.4(d)	Releases and Covenants Not to Sue	895
§ 5-6.4(d)(1)	Settlement with the Defendant	895
§ 5-6.4(e)	Arbitration Agreements	896
§ 5-6.4(f)	SLAPP Laws	898
§ 5-6.4(g)	Judicial Estoppel	899
CHAPTER 5-7. VICARIOUS LIABILITY	901
§ 5-7.1	The Role of Vicarious Liability	901
§ 5-7.2	Law Firm Practice	901
§ 5-7.2(a)	The Vicarious Liability of Law Firms	902
§ 5-7.2(a)(1)	Ordinary Course of Firm Business	903
§ 5-7.2(a)(1)(A)	Intended to Benefit the Firm	903
§ 5-7.2(a)(1)(B)	Normal Risks Incidental to the Practice of Law	904
§ 5-7.2(a)(2)	Actual and Apparent Authority	905
§ 5-7.2(b)	Procedural Issues Related to Claims Against Firms	907
§ 5-7.2(c)	Liability of Partners in General Partnerships	908
§ 5-7.2(d)	Liability of Principals in Limited Liability Law Firms	908
§ 5-7.2(d)(1)	Practice in Professional Corporation	908
§ 5-7.2(d)(2)	Practice in Limited Liability Companies and Limited Liability Partnerships	910
§ 5-7.3	Other Associations That Expose Lawyers to Liability	914
§ 5-7.3(a)	Referral Fee Arrangements	914
§ 5-7.3(a)(1)	Joint Responsibility and Joint Ventures	915
§ 5-7.3(a)(2)	Negligent Referral	916

§ 5-7.3(b)	Co-Counsel Arrangements and Other Outside Counsel	919
§ 5-7.3(c)	Of Counsel Arrangements	920
§ 5-7.3(d)	Office-Sharing Arrangements	921
§ 5-7.3(d)(1)	Partnership by Estoppel	922
§ 5-7.3(d)(2)	Partnership in Fact	923
§ 5-7.3(d)(3)	Joint Venture	923
§ 5-7.3(e)	Temporary Lawyers	924
§ 5-7.3(f)	Nondelegable Duties	925
§ 5-7.3(g)	Assisting Non-Lawyers in the Practice of Law	927
CHAPTER 5-8. LEGAL MALPRACTICE INSURANCE.....		929
§ 5-8.1	The Importance of Legal Malpractice Insurance	929
§ 5-8.1(a)	Mandatory Coverage	930
§ 5-8.1(b)	Disclosure Requirements	931
§ 5-8.2	What Coverage Is Available	932
§ 5-8.3	The Anatomy of a Policy	933
§ 5-8.3(a)	Declarations Page	933
§ 5-8.3(b)	Insuring Agreements	934
§ 5-8.3(b)(1)	Claims for Money Damages Arising from the Rendition of Legal Services to Others	934
§ 5-8.3(b)(2)	Duty to Defend	935
§ 5-8.3(b)(3)	Liability Limits and Self-Liquidating Policies	935
§ 5-8.3(b)(4)	Named Insured and Other Insureds	936
§ 5-8.3(c)	Policy Exclusions	936
§ 5-8.3(c)(1)	Exclusions Eliminating Coverage Not Intended to Be Provided	936
§ 5-8.3(c)(2)	Exclusions Targeting Extraordinary Risks	938
§ 5-8.3(c)(3)	Exclusions Relating to Moral or Illegal Risks	938
§ 5-8.3(d)	Policy Conditions That Affect Coverage	939
§ 5-8.4	Handling Claims and Potential Claims	940
§ 5-8.4(a)	Consult Counsel	940
§ 5-8.4(b)	Disclosure Under Model Rule 1.6	940
§ 5-8.4(c)	In-Firm Attorney-Client Privilege	941
§ 5-8.4(d)	Prompt Notice to Insurer	941
§ 5-8.5	Dealing with Clients When Lawyers Commit Malpractice	942
§ 5-8.5(a)	Determining Whether There Is a Duty to Disclose Errors	942
§ 5-8.5(b)	What Information Should Be Disclosed	945
§ 5-8.5(c)	Avoid Breaching the Cooperation Clause	945
§ 5-8.5(d)	Consequences of Nondisclosure	946
§ 5-8.5(e)	Evaluating Remedial Action and Withdrawal	947

PART SIX. JUDICIAL ETHICS AND THE CONDUCT OF JUDGES

CHAPTER 6-1. REGULATING JUDICIAL CONDUCT GENERALLY—		
FEATURES AND PRINCIPLES		951
§ 6-1.1	Modern Judicial Ethics and Codes of Judicial Conduct	951
§ 6-1.2	Judicial Discipline in the State Courts	952
§ 6-1.3	Judicial Discipline in the Federal Courts	953

§ 6-1.4	Core Values: Impartiality, Independence, and Integrity	955
§ 6-1.4(a)	Judicial Impartiality	956
§ 6-1.4(b)	Judicial Independence	957
§ 6-1.4(c)	Judicial Integrity	957
§ 6-1.5	Foundational Rules	958
§ 6-1.5(a)	The Duty to Comply with the Law	958
§ 6-1.5(b)	The Duty to Promote Public Confidence and Avoid Appearances of Impropriety	959
§ 6-1.5(c)	The Duty to Avoid Abusing the Prestige of Judicial Office.....	961
CHAPTER 6-2. REGULATING JUDICIAL CONDUCT ON THE BENCH		963
§ 6-2.1	Responsibilities Related to Maintaining Fitness for Judicial Service	963
§ 6-2.1(a)	Competence and Diligence	963
§ 6-2.1(b)	Demeanor	966
§ 6-2.2	Responsibilities Related to the Use of Judicial Independence and Power	968
§ 6-2.2(a)	The Duty to Uphold and Apply the Law	968
§ 6-2.2(b)	The Duty to Resist External Influences on Judicial Conduct.....	971
§ 6-2.3	Responsibilities Related to Preserving Judicial Impartiality and Fairness.....	973
§ 6-2.3(a)	Judicial Bias.....	973
§ 6-2.3(a)(1)	Bias Toward Specific People.....	973
§ 6-2.3(a)(2)	Bias Toward Classes of People.....	974
§ 6-2.3(b)	Respecting Parties' Rights to Be Heard	976
§ 6-2.3(c)	Public Statements on Pending and Future Cases	978
§ 6-2.3(c)(1)	Comments on Pending and Impending Cases.....	978
§ 6-2.3(c)(2)	Pledges or Promises Concerning Future Cases.....	980
§ 6-2.4	<i>Ex Parte</i> Communications.....	981
§ 6-2.4(a)	In General	981
§ 6-2.4(b)	Prohibited Communications.....	983
§ 6-2.4(c)	<i>Ex Parte</i> Investigations	985
§ 6-2.5	Judicial Disqualification	986
§ 6-2.5(a)	Introduction to Disqualification.....	986
§ 6-2.5(b)	Disqualification Standards.....	988
§ 6-2.5(b)(1)	Overview of Standards and Their Interpretation.....	988
§ 6-2.5(b)(2)	When Impartiality Might Reasonably Be Questioned.....	990
§ 6-2.5(b)(2)(A)	Judicial Conduct	991
§ 6-2.5(b)(2)(B)	Extrajudicial Conduct.....	995
§ 6-2.5(b)(3)	Specific Grounds.....	999
§ 6-2.5(b)(3)(A)	Personal Bias	999
§ 6-2.5(b)(3)(B)	Personal Knowledge of Disputed Facts	1000
§ 6-2.5(b)(3)(C)	Relatives as Parties, Attorneys, or Witnesses	1001
§ 6-2.5(b)(3)(D)	Judge Was a Lawyer or Affiliated with a Lawyer in the Proceeding	1002
§ 6-2.5(b)(3)(E)	Economic or Other Interest in the Proceeding.....	1003
§ 6-2.5(b)(3)(F)	Campaign Support and Commitments.....	1006
§ 6-2.5(c)	Disqualification Procedure.....	1008

CHAPTER 6-3. REGULATING JUDICIAL CONDUCT OFF THE BENCH— EXTRAJUDICIAL AND POLITICAL ACTIVITIES	1011
§ 6-3.1 Extrajudicial Conduct	1011
§ 6-3.1(a) Extrajudicial Conduct: General Obligations	1011
§ 6-3.1(b) Governmental Activities	1012
§ 6-3.1(c) Avocational Activities	1014
§ 6-3.1(d) Business Activities	1017
§ 6-3.1(e) Gifts	1018
§ 6-3.2 Political Activities	1020
TABLE OF CASES	1027
TABLE OF STATUTES	1043
TABLE OF RULES	1045
TABLE OF RESTATEMENTS	1053
INDEX	1057