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# Preface

The fundamental theme of this book is the necessity for lawyers to develop a philosophy of lawyering. 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 regulating lawyers, and mechanisms for delivering legal services. Chapter 1 also provides an overview of various rules and standards of professional conduct and the regulatory structure governing lawyers.

Chapters 2 through 6, the core of the book, present difficult problems of professional responsibility in various areas of practice—criminal defense and prosecution, civil litigation, office practice, government, public interest, and the judiciary. These chapters focus on both the practice and the institutional dimensions of a theory of lawyering. The problems do not have easy answers and will require you to learn to exercise personal and professional judgment within a framework of rules of ethics.

The book is organized first by area of practice (chapters) and then by ethical concept within area of practice (chapter divisions). Thus, problems of the client-lawyer relationship, confidentiality, conflicts of interest, limitations on zealous representation, and delivery of legal services appear in several chapters. I have chosen this organization for several reasons. First, context matters; for example, confidentiality problems in the criminal defense area differ from those in office practice. The book includes frequent cross-references so that you can compare confidentiality or conflict of interest problems as they appear in different practice fields. I hope that review and comparison of issues in various types of practice will deepen your understanding of ethical dilemmas. Second, choice of area of practice is an important aspect of a person's philosophy of lawyering. Organization by area of practice should help you to obtain a feel for what it is like to be, for example, a criminal defense lawyer, a prosecutor, a civil litigator, or a business attorney. The book contains references to the literature on various areas of practice for those of you who would like to delve further into these issues.

Instructors who used the third edition will notice the following significant changes: First, I have added several new cases and opinions, including *Iowa Supreme Court Board of Professional Ethics & Conduct v. Apland* in Chapter 2, dealing with nonrefundable retainers; ABA Formal Opinion #06-422 on *Review and Use of Metadata* in Chapter 3; the classic case of *Spaulding v. Zimmerman* in Chapter 4, considering defense counsel's failure to disclose a life-threatening injury to a minor plaintiff; *Alexander v. Cahill* in Chapter 4, examining the constitutionality of various restrictions on advertisements and solicitations; and *Van Kirk v. Miller* in Chapter 5, discussing the propriety of a lawyer's representation of multiple parties in the sale of a business. Second, I have updated the book to include significant recent developments, including the ABA's adoption of the 2007 Code of Judicial Conduct. I have also reorganized and rewritten a number of problems to sharpen issues that the problems are intended to raise. Third, to assist instructors who prefer a more traditional, doctrinal organization to the material, I have included an alternative Table of Contents for the material, organized principally by doctrine rather than practice area. The teacher's manual includes sample syllabi for doctrinally organized courses. Fourth, at the end of each chapter I have included multiple choice questions to assist students in learning basic rules of professional responsibility and the law governing lawyers. Instructors can use some of these problems in class, assign them for homework, or inform students of their availability as exercises to review course material and to prepare for the MPRE. The teacher's manual contains an analysis of each of the problems. Fifth, a Web site will accompany this edition. The Web site will include updates for the book, sample essay questions for students to use to review course material, and two problems omitted from this fourth edition: Problem 2-11 (Fee Forfeiture and Lawyer Subpoenas) and Problem 5-5 (Tax Practice). Instructors who wish to continue to use these problems will have access to them on the Web site.

A number of instructors who used earlier editions offered very helpful comments that provide the foundation for this edition. My thanks especially go to Anita Bernstein (Emory), Jennifer Brown (Quinnipiac), Gerry Clark (Suffolk), David Cummins (Texas Tech), Marjorie Girth (Georgia State), Vincent Johnson (St. Mary's), Nancy Moore (Boston University), Andy Perlman (Suffolk), Roy Simon (Hofstra), and Lena Velasquez (California Western). Colleagues at South Carolina—Gregory Adams, Jane Aiken (now at Washington University), Ladson Boyle, James Flanagan, John Freeman, Alan Medlin, Dennis Nolan, Eldon Wedlock, and Robert Wilcox—reviewed portions of the manuscript and made invaluable suggestions.

I retire from the University of South Carolina School of Law on August 15, 2008, after 32 years of teaching. I wish to express my deepest appreciation to the Law School and the University, which have provided wonderful support for my teaching and scholarship, including my last summer at the Law School when I completed this book. To my students and colleagues, thank you for the opportunity to share these years together.

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

Nathan Crystal

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