Preface

This book represents a unique collaboration between a law professor with extensive academic experience (Susan Martyn) and a long-time practitioner who teaches law students and has dealt with most of the issues in this book (Larry Fox). 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.

The Rules

Each section of this book cites to two sets of rules: the relevant Model rules of Professional Conduct (cited as “MR”), and the Restatement (Third) of the Law Governing Lawyers (cited as “RLGL”). Courts rely on both of these resources, which you will find in your rules supplement.

The 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 70 of these cases in this book. Each has been edited for clarity. We use ellipses or brackets to indicate omissions from the court’s opinion, but omitted citations and footnotes are not identified.

The 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 that precede them in each section. As you address the dilemmas faced by Martyn & Fox, you will discover that 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 hope that these problems will engage you in interesting issues faced by modern lawyers, as well as help you understand the significance of the rules,
cases, and other materials that explain and construe them. We anticipate that the relative brevity of each problem will lead you to conclude that each answer “depends on” additional facts that could change the advice you offer Martyn & Fox. We invite you to search for the relevant facts that matter.

Finally, once you get into the law that governs the situation, you will discover occasions when Martyn & Fox has a range of options. In these instances, you should identify the discretion ceded to the lawyer’s individual moral conscience and articulate how you believe that discretion should be exercised. Here, we hope to assist you in developing practical ethical judgment as well as learning the law.

The Short Stories

The five 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 wrote each these stories as chapters in several of his books. 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.

The Continuing Notes

In addition to short introductions, this book includes 25 notes organized around five general themes. These notes provide an opportunity to understand, connect, and integrate the basic law and policy that the courts have woven throughout the law governing lawyers.

The first set of four 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.

Chapter 1: The Client-Lawyer Relationship page 11
Chapter 6: The Directive Lawyer and Fiduciary Duty 170
Chapter 7: The Instrumental Lawyer and the Bounds of the Law 243
Chapter 8: Zealous Representation within the Bounds of the Law 297

The second series of continuing notes, entitled The Law Governing Lawyers, encompasses six notes, where 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 ignored.

Chapter 1: Sources of Law page 17
Chapter 2: Professional Discipline 44
Chapter 3: Actual and Accidental Clients 79
Chapter 4: Tort Liability 137
Chapter 9: Losing a Client by Disqualification or Injunction 307
Chapter 10: Loss of Fee or Other Benefits 364
In the third group of notes, entitled The Bounds of the Law, five notes explain when lawyers may or must say “no” to clients, because of other generally applicable law that imposes a limit on the lawyer's advocacy.

Chapter 6: Court Orders  page 208  
Chapter 7: Client Fraud  252  
Chapter 8: Crime  270  
Chapter 14: A Reprise  528  
Chapter 15: The Constitution  575  

The fourth series of five notes, entitled Practice Pointers, offers you practical advice about how to avoid or mitigate the legal consequences raised by the problems, cases, and other materials.

Chapter 3: Engagement, Nonengagement, and Disengagement Letters  page 77  
Chapter 11: Implementing a Conflicts Control System  419  
Chapter 12: Trust Fund Management  464  
Chapter 13: Wrongful Discharge  506  
Chapter 15: The Globalization of Law Practice  598  

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 also can limit a lawyer's advocacy on behalf of the client.

Chapter 3: Service Pro Bono Publico  page 64  
Chapter 5: Criminal Defense  118  
Chapter 9: Representing Organizations  187  
Chapter 10: Insurance Defense  381  
Chapter 11: Representing Governments  426  

The Combination

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

Susan Martyn and Larry Fox  
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