

To Carrie and Tony, Emily and Peter
Angela and Sarah

About the Authors

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Susan Martyn is Stoepler Professor of Law and Values at the University of Toledo College of Law and has authored four books and over thirty articles in law reviews and interdisciplinary journals.

In addition to this volume, she and Larry Fox have published three other books about lawyer's ethics in the past three years: a casebook for law students entitled *Traversing the Ethical Minefield: Problems, Law and Professional Responsibility*, a professional standards volume to accompany *Traversing* with W. Bradley Wendel entitled: *The Law Governing Lawyers: National Rules, Standards, Statutes, and State Lawyer Codes*, and a lawyer's desk-book entitled *Red Flags: A Lawyer's Handbook on Legal Ethics*.

Professor Martyn's work flows out of her service on several national bodies that have helped shape the law that governs lawyer conduct. She acted as an advisor to the American Law Institute's

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Restatement of the Law Governing Lawyers (1987-2000), and was one of thirteen members of the American Bar Association's Ethics 2000 Commission, (1997-2002). She and Larry Fox also offer legal ethics education programs to lawyers across the country.

Professor Martyn is a member of the Michigan and Ohio Bars.

Acknowledgements

Our collaboration started with the preparation of a casebook for law students, *Traversing the Ethical Minefield: Problems, Law and Professional Responsibility* (Aspen Publishers 2004). We are grateful for the continuing response of law students to these materials, which has encouraged us to write for other audiences. We branched out and spoke to practicing lawyers in our second publication, *Red Flags: A Lawyer's Handbook on Legal Ethics* (ALI-ABA 2005). Once again, we have been blessed with feedback from lawyers who seem to appreciate our attempt to make legal ethics fun and intelligible. In this book we have rounded out our attempts to make the law governing lawyer conduct accessible by speaking directly to the most important audience of all: clients.

Of course, no volume like this would be possible without the extraordinary assistance of many, especially since we are lawyers and need to be reminded about our tendency to lapse into legal jargon. We thank the following non-lawyer reviewers who helped make clear to us that legal writing can be to clear writing as military music is to music. Bea Cucinotta, your dedicated reading of this manuscript, devotion to detail and consistency continues to amaze us. Kelly Kszywinski, Carol Stacy and Melissa Hicks and Peter Martyn, your comments about the overall tone and message of the book helped us reshape our language. Ralph DeGroff, Jr., your dedication to precise use of language is the stuff of legends.

Preface

The American public spends dearly each year on legal services. And those legal services are provided to handle the very most important matters clients face — the purchase of a home and other important transactions, wills, custody issues and divorce, any time a client has to go to court. Yet as important as a client's entry onto the legal terrain may be, more often than not it is a trip through unfamiliar territory without a map or a compass. While in an ideal world each lawyer could be counted on to share this information face-to-face with each new client, the truth is that this does not always occur. And, as far as we know, there is no guide that provides clients with the information they need about what their lawyers owe them. We hope this book will provide both the map and the compass.

The purpose is to provide you with the information you should know about the ethical obligations of your lawyer. While this book is no substitute for informed conversation between your counsel and you (itself an ethical requirement), as one famous retailer observes, "An informed consumer is our best customer." The more clients know about these matters, the more likely clients' encounters with lawyers and our legal system will be rewarding ones.

We hope that you will read this book in that spirit. We invite you to chuckle with us at the cartoons designed to illustrate topics in each chapter. We've also included boxes that outline the highlights of each chapter and provide you with questions you should ask your lawyer about a particular topic. Finally, we call your attention to the bolded terms in the text, which means that we have defined them in a glossary at the end of the book. We hope all of this information will not only educate clients, but indirectly, will promote a higher level of ethical conduct in the lawyers you hire.

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PART ONE:

THE CLIENT-LAWYER RELATIONSHIP

INTRODUCTION

In this part of the book, we begin by exploring some of the ethical and legal regulation that reminds lawyers of the special nature of the client-lawyer relationship. We also offer you tips on finding and paying a lawyer.

We know the jokes. The suggestions that “lawyers’ ethics” is just another oxymoron like military justice. The fact is that because we serve clients, lawyers are required to abide by a rather elaborate code of conduct designed to protect client interests.

No lawyer in America may practice law until he or she has been admitted to the bars of one or more states or the District of Columbia. Historically and literally, “admitted to the bar” means that a lawyer has permission to appear in courts, on the side of the “bar” or rail nearest the judge. But today, bar admission also grants a lawyer permission to draft legal documents and give legal advice. Court appearances also have grown to include representing clients in **arbitration, mediation**, and other forms of **alternative dispute resolution**.

Each state and the District of Columbia controls its own bar admission, generally through the state’s Supreme Court. And once a lawyer is admitted, each state also imposes **Rules of Professional Conduct** with which each lawyer must agree to comply, a code that, if violated, can result in the sanctioning — even the suspension or disbarment — of the offending lawyer. But enough of dwelling on the potential downside of the profession. The purpose of this little volume is positive. We want you to understand how

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these **Rules of Professional Conduct** shape the client-lawyer relationship, by requiring lawyers to observe what we call the “**4 Cs**”: **communication, competence, confidentiality, and conflict of interest** resolution. We explain these professional obligations of lawyers in the first eight chapters.

In the rest of the book, we offer guidance about what not to expect from your lawyer (Chapter 9), how to deal with other people's lawyers (Chapter 10) and how to evaluate your legal representation (Chapter 11).

HOW DO LAWYERS DIFFER FROM OTHER SERVICE PROVIDERS?

1. Admission: A lawyer cannot offer legal services unless he or she is admitted to practice law in each state where he or she regularly practices. To be admitted to the bar, each lawyer must:
 - a. Graduate from a recognized law school
 - b. Pass a bar exam
 - c. Establish personal character through a lengthy background check, and
 - d. Take an oath.
2. Once admitted, each lawyer must follow that state's **Rules of Professional Conduct**. Each code regulates:
 - a. The client-lawyer relationship, including **the 4 Cs**:
 - i. **Competence**
 - ii. **Communication**
 - iii. **Confidentiality** and
 - iv. **Conflict of interest** resolution
 - b. The lawyer's duties to the courts
 - c. The lawyer's duties to other third persons