

**Real Ethics
for
Real Lawyers**

*Carolina Academic Press
Law Casebook Series
Advisory Board*



Gary J. Simson, Chairman
Cornell Law School

Raj K. Bhala
University of Kansas School of Law

John C. Coffee, Jr.
Columbia University School of Law

Randall Coyne
University of Oklahoma Law Center

John S. Dzienkowski
University of Texas School of Law

Paul Finkelman
University of Tulsa College of Law

Robert M. Jarvis
*Shepard Broad Law Center
Nova Southeastern University*

Vincent R. Johnson
St. Mary's University School of Law

Michael A. Olivas
University of Houston Law Center

Kenneth Port
William Mitchell College of Law

Michael P. Scharf
Case Western Reserve University Law School

Peter M. Shane
*Moritz College of Law
The Ohio State University*

Emily L. Sherwin
Cornell Law School

John F. Sutton, Jr.
Emeritus, University of Texas School of Law

David B. Wexler
University of Arizona College of Law

Real Ethics for Real Lawyers

Daniel R. Coquillette

J. DONALD MONAN, S.J. UNIVERSITY PROFESSOR,
BOSTON COLLEGE LAW SCHOOL

LESTER KISSEL VISITING PROFESSOR,
HARVARD LAW SCHOOL

REPORTER, COMMITTEE ON RULES OF PRACTICE AND PROCEDURE,
JUDICIAL CONFERENCE OF THE UNITED STATES

CAROLINA ACADEMIC PRESS

Durham, North Carolina

Copyright © 2005
Daniel R. Coquillette
All Rights Reserved

ISBN 1-59460-148-8
LCCN 2005932031

CAROLINA ACADEMIC PRESS
700 Kent St.
Durham, NC 27701
Telephone (919) 489-7486
Fax (919) 493-5668
www.cap-press.com

Printed in the United States of America

To My Parents, Who Taught Real Ethics.

Contents

Table of Cases	xiii
Foreword	xxv
Acknowledgments	xxvii
Chapter I Regulating the Profession	3
Problem 1	3
I-1. Introduction: What Are “Professional Ethics?”	3
A. The Jurisprudential Context	4
B. The Historical Context	4
C. The Sources of Professional Ethics Today	6
D. The Danger of Rules	9
I-2. Professionalism	9
Daniel R. Coquillette, <i>Professionalism: The Deep Theory</i>	9
I-3. The Historical and Modern Context	15
Daniel R. Coquillette, <i>The Birth of the English Legal Profession and English Legal Education</i>	15
Andrew L. Kaufman, <i>Who Should Make the Rules Governing Conduct of Lawyers in Federal Matters</i>	21
I-4. Professionalism: The Rules	32
ABA Model Rules	32
ABA Code	36
Federal Rules of Appellate Procedure	37
I-5. Cases and Materials	37
<i>In Re Ruffalo</i>	37
<i>In re S. (A Barrister)</i>	43
Daniel R. Coquillette and Judith A. McMorrow, <i>Toward an Ecclesiastical Professional Ethics: Lessons from the Legal Profession</i>	50
Chapter II Loyalty to Present Clients: Concurrent Conflicts of Interest	59
Problems	59
Problem 2	59
Problem 3	59
Problem 4	59
II-1. Introduction: “Professional Loyalty”	59
A. Practical Problems of Enforcing Loyalty	60
B. The “Two-Pronged Test”	61
C. Evolution of Rules	61
D. “Issue” Conflicts	62
II-2. Concurrent Conflicts of Interest: The Rules	63
ABA Model Rules	63

ABA Code	71
Federal Rules of Civil Procedure	72
II-3. Concurrent Conflicts of Interest: Cases and Materials	73
<i>The McCourt Company v. FPC Properties et al.</i>	73
<i>Baldassarre v. Butler</i>	77
<i>In re Cohen</i>	78
John P. Frank, <i>The Legal Ethics of Louis D. Brandeis</i>	82
Alex Berenson, <i>A Caldron of Ethics and Asbestos</i>	94
Karen Donovan, <i>When Big Law Firms Trip Over Their Own Clients</i>	98
<i>The Association of the Bar of the City of New York Formal Opinion</i> 2003-03: <i>Checking for Conflicts of Interest</i>	100
Chapter III Loyalty to Past Clients: Successive and Imputed Conflicts of Interest	113
Problems	113
Problem 5	113
Problem 6	113
Problem 7	113
Problem 8	113
Problem 9	113
III-1. Introduction: Living with the “Hand of the Past” and Legal Fictions	114
A. Legal Fictions	114
B. Screening	115
III-2. Successive and Imputed Conflicts of Interest: The Rules	116
ABA Model Rules	116
ABA Code	123
III-3. Imputed Disqualification and Successive Conflicts of Interest:	
Cases and Materials	123
<i>Emle Industries, Inc. v. Patentex, Inc.</i>	123
<i>Silver Chrysler Plymouth, Inc. v. Chrysler Motors Corporation</i>	132
<i>Hull v. Celanese Corporation</i>	141
<i>General Motors Corp. v. City of New York</i>	144
<i>Analytica, Inc. v. NPD Research, Inc.</i>	151
John Gibeaut, <i>Telling Secrets</i>	167
Henry Sumner Maine, <i>Ancient Law: Its Connection with the Early History of Society, and Its Relation to Modern Ideas</i>	176
Jerome Frank, <i>Law and the Modern Mind</i>	177
Chapter IV Confidentiality	179
Problems	179
Problem 10	179
Problem 11	179
Problem 12	179
Problem 13	179
Problem 14	179
IV-1. Introduction: Keeping Secrets	180
A. Confusing and Different Types of Professional Confidentiality: “Information Relating to the Representation,” “Confidential” Information, “Secrets,” “Confidences,” and “Privileged” Information	180

B. Exceptions	182
C. Inadvertent Disclosure	182
D. Physical Evidence	183
E. Controversy	184
IV-2. Confidentiality: The Rules	184
ABA Model Rules	184
ABA Code	188
8 <i>Wigmore on Evidence</i> § 2292	189
Alaska Statutes	189
Massachusetts General Laws Chapter 274, Sec. 4	190
IV-3. Confidentiality: Cases and Materials	190
<i>State rel. Sowers v. Olwell</i>	190
<i>In re Ryder</i>	195
<i>Meyerhofer v. Empire Fire and Marine Ins. Co.</i>	203
<i>Purcell v. District Attorney for Suffolk District</i>	208
Bryce Nelson, <i>Ethical Dilemma: Should Lawyers Turn In Clients?</i>	213
<i>People v. Belge</i>	216
<i>McClure v. Thompson</i>	217
<i>Rico v. Mitsubishi Motors Corp.</i>	233
Chapter V Truthfulness	245
Problems	245
Problem 15	245
Problem 16	245
Problem 17	245
Problem 18	245
Problem 19	245
Problem 20	246
Problem 21	246
V-1. Introduction: Being an Honest Lawyer	247
A. Affirmative Duties of Honesty Before a Tribunal	247
B. Other Affirmative Duties of Honesty	249
V-2. Truthfulness: The Rules	251
ABA Model Rules	251
ABA Code	257
V-3. Truthfulness: Cases and Materials	258
<i>American Law Institute Restatement of The Law Governing Lawyers</i>	258
<i>Nix v. Whiteside</i>	261
<i>Commonwealth v. Curtis Mitchell</i>	274
<i>In re Beiny</i>	276
<i>Cincinnati Bar Assn. v. Statzer</i>	279
Monroe H. Freedman, <i>Professional Responsibility of the Criminal Defense Lawyer: The Three Hardest Questions</i>	285
Marvin E. Frankel, <i>The Search for Truth: An Umpireal View</i>	295
Alvin B. Rubin, <i>A Causerie on Lawyers' Ethics in Negotiation</i>	314
<i>Shafer v. Berger</i>	326
<i>The Professional Ethics Commission of the Board of Overseers of the Bar [Maine], Opinion #146</i>	332
<i>District of Columbia Ethics Opinion 323</i>	338

Chapter VI	Difficult Clients and Communications: Responsibility for Corporations, the Government, the Incompetent and the Trusting	343
Problems		343
Problem 22		343
Problem 23		343
Problem 24		343
Problem 25		344
Problem 26		344
VI-1. Introduction: The Responsibility for Handling Difficult Clients and Client Communications		344
A. Organizational Clients		345
B. The Model Rule 4.2 Controversy		347
C. The “Neutral” Lawyer Controversy		348
D. Withdrawal		349
VI-2. “Difficult” Clients and Communications: The Rules		350
ABA Model Rules		350
ABA Code		363
SEC Standards of Professional Conduct Press Release and CFR Part 205		364
17 C.F.R. §205.1		366
VI-3. “Difficult” Clients and Communications: Cases and Materials		375
<i>In re Lindsey</i>		375
A.A. Sommer, Jr., <i>The Emerging Responsibilities of the Securities Lawyer</i>		397
Mary S. Diemer, <i>SEC Continues Considering Mandatory “Noisy Withdrawal” Rules</i>		404
William H. Simon, <i>From the Trenches and Towers: The Kaye Scholer Affair</i>		406
George Judson, <i>Hostility to Whistle-Blowers Is Cited in A-Plant Problems</i>		438
Fred Zacharias, <i>Lawyers as Gatekeepers</i>		439
<i>The Government Client and Confidentiality Opinion 73-1</i>		
Professional Ethics Committee, Federal Bar Association		453
Alan A. Stone, M.D., <i>The Myth of Advocacy</i>		457
Association of the Bar of the City of New York Ethics Committee Inquiry Reference No. 80-23		462
Don Van Natta, Jr., <i>Questioning of Ex-Intern Provoked Angry Words</i>		467
Paul D. Boynton, <i>Talking to Manager in Bias Suit Not Unethical</i>		470
<i>Messing, Rudavsky & Weliky, P.C. v. President & Fellows of Harvard College</i>		473
Chapter VII	Starting a Law Practice	487
Problems		487
Problem 27		487
Problem 28		487
Problem 29		487
Problem 30		487
Problem 31		488
VII-1. Introduction: “On Your Own” in Law Practice		488
A. Advertising and Solicitation		489

B. Specialization	490
C. Fees	491
VII-2. Law Practice: The Rules	492
ABA Model Rules	492
ABA Code	507
VII-3. Law Practice: Cases and Materials	508
<i>Goldfarb v. Virginia State Bar</i>	508
<i>Bates v. State Bar of Arizona</i>	514
<i>In Re Primus</i>	532
<i>Ohralik v. Ohio State Bar Assn.</i>	545
<i>Shapiro v. Kentucky Bar Assn.</i>	553
<i>Florida Bar v. Went For It, Inc.</i>	565
<i>In the Matter of Fordham</i>	573
David Rattigan, <i>Would You Know This Man If You Saw Him?</i>	581
James E. Morgan, <i>Internet Advertising Raises Ethical Concerns</i>	583
<i>How to Start and Run a Successful Solo or Small-Firm Practice</i>	585
Lawrence J. Fox, <i>Dan's World: A Free Enterprise Dream;</i> <i>An Ethics Nightmare</i>	586
Chapter VIII Bar Admissions	611
Problems	611
Problem 32	611
Problem 33	612
Problem 34	612
VIII-1. Introduction: The “Gatekeepers” and You	612
A. Barriers to Entry	613
B. Readmission and Contrition	614
VIII-2. Bar Admissions: The Rules	614
ABA Model Rules	614
ABA Code	615
VIII-3. Bar Admissions: Cases and Materials	615
<i>Application of Gahan</i>	615
<i>In re Applicant</i>	621
<i>In re Hale</i>	627
<i>In re Alger Hiss</i>	628
<i>In re Hinson-Lyles</i>	638
Bar Application Form, Iowa (2000)	646
Commonwealth of Massachusetts Bar Application Forms	651
Chapter IX Bar Discipline and Malpractice	659
Problems	659
Problem 35	659
Problem 36	659
Problem 37	659
Problem 38	659
Problem 39	659
Problem 40	660
IX-1. Introduction: The “Watchdogs” and You	660
A. The Process	661

B. Scope	662
C. Jurisdiction and Choice of Law	663
D. Self-Incrimination	664
E. Self-Enforcement: The “Snitch” Rule, Model Rule 8.3	665
IX-2. Bar Discipline: The Rules	666
ABA Model Rules	666
ABA Code	670
IX-3. Bar Discipline: Cases and Materials	670
<i>Attorney Grievance Commission of Maryland v. Sheinbein</i>	670
<i>In re Hinds</i>	683
<i>Matter of Erdmann</i>	703
<i>In re Wilkins</i>	708
<i>State Bar of Arizona v. Richard C. Kleindienst</i>	710
<i>James A. Neal v. William Jefferson Clinton</i>	715
<i>Spevack v. Klein</i>	717
<i>Debock v. State</i>	726
Massachusetts Board of Bar Overseers, “How to File a Complaint”	731
Massachusetts Client Security Board Announcement (2004)	735
[“The Spalding Report”] <i>Petition of Boston Bar Association to Adopt the Canons and the Disciplinary Rules in the Code of Professional Responsibility Adopted by the American Bar Association</i>	735
<i>ABA Committee on Evaluation of Disciplinary Enforcement, Problems and Recommendations in Disciplinary Enforcement</i>	737
Daniel R. Coquillette, <i>Argument—Supreme Judicial Court</i>	739
<i>American Bar Association Formal Opinion 03-431: Lawyer’s Duty to Report Rule Violations by Another Lawyer Who May Suffer from Disability or Impairment</i>	741
Appendix Massachusetts Rules of Professional Conduct	
Supreme Judicial Court Rule 3:07	745
Index to the Rules	745
Index	837

Table of Cases

(Primary cases are listed in **bold** typeface.)

A

- Abikkarm v. Chrysler, 136
Abrams v. United States, 561
Abrams, In re, 341
Addington v. Texas, 462
Ades, In re, 541, 552
Aeroflot General Corp. v. Transport Indemnity, 239
Air Crash Disaster Roselawn Ind., In re, 477
Alabama, NAACP v., 535, 541
Alexander v. Tandem Staffing Solutions Inc., 203
Alison, Attorney Grievance Commission v., 682
Allen v. State Bar of California, 630
Allen, NAACP v. 538
Allied Realty of St. Paul v. Exchange Nat. Bank of Chicago, 183
Aluminum Co. of America, United States v., 149
American Column Co. v. United States, 510
American Continental/Lincoln S&L Sec. Litig., In re, 417
American Insurance Assn. v. Kentucky Bar Assn., 602
American Medical Assn. v. United States, 512
Analytica Inc. v. NPD Research Inc., 151
Anastaplo, In re, 724
Apex Hosiery Co. v. Leader, 512
Apple Corps Ltd. v. International Collectors Society, 340
Applicant, In re, 25, 612, 621
Application of Gahan, 615
Application of Smith, In re, 632, 634, 668
Application of Spriggs, In re, 634
Application of Strand, In re, 634, 635, 669
Application of Van Wyck, In re, 630
Arlington, United States v., 446
Armstrong v. McAlpin, 198
Ashy, In re, 642
Associated Press v. United States, 512
AT&T, United States v., 389
Atkinson, Attorney Grievance Commission v., 674, 675
Atlanta Coca-Cola Bottling Co. v. Goss, 226
Attorney Grievance Commission of Maryland v. Sheinbein, 670
Attorney Grievance Commission v. Alison, 682
Attorney Grievance Commission v. Atkinson, 674, 675
Attorney Grievance Commission v. Black, 674
Attorney Grievance Commission v. Breschi, 673, 674
Attorney Grievance Commission v. Childress, 673, 675
Attorney Grievance Commission v. Clark, 676
Attorney Grievance Commission v. Ezrin, 677
Attorney Grievance Commission v. Garland, 673
Attorney Grievance Commission v. Glenn, 674

- Attorney Grievance Commission v. Goldsborough, 673
 Attorney Grievance Commission v. Hollis, 677
 Attorney Grievance Commission v. Kent 673
 Attorney Grievance Commission v. Painter, 674
 Attorney Grievance Commission v. Powell, 673
 Attorney Grievance Commission v. Proctor, 673
 Attorney Grievance Commission v. Richardson, 683
 Attorney Grievance Commission v. Sabghir, 677
 Attorney Grievance Commission v. Vanderline, 677
 Attorney Grievance Commission v. White, 677
 Ausman v. Arthur Andersen LLP, 169
- B**
- B.L.M. V. Sabo & Deitsch, 332
 Baggett v. Bullit, 688
 Baird v. Arizona, 618
Baldasarre v. Butler, 77
 Balla v. Gambro Inc., 170, 204
 Bally v. Guiford Township Sch. Corp., 710
 Bar Association of the City of Boston v. Casey, 630
 Bar Association of the City of Boston v. Greenhood, 630, 632
 Barnes v. Glen Theatre Inc., 569
 Barnes v. United States, 630
 Baron, In re, 695
 Bartee, People v., 275
 Barton, In re, 632, 634
 Bates v. Little Rock, 539
Bates v. State Bar of Arizona, 467, 490, 514, 538, 561, 566, 572, 553
 Bates, In re, 516
 Bayside Motors Inc. v. Chrysler, 136, 170
 Beatty v. NP Corp., 580
 Beecher, NAACP Inc v., 538
 Beilan v. Board of Education, 724
Beiny, In re, 276, 310
Belge, People v., 80, 214, 216
- Berger v. United States, 383
 Bester v. Louisiana Supreme Court Comm. on Bar Admissions, 640
 Biakanja v. Irving, 329
 Bieter Co., In re, 378
 Bifield, United States v., 264
 Bigelow v. Virginia, 517, 518
 Bily v. Arthur Young & Co., 331
 Bithoney, In re, 696
 Black, Attorney Grievance Commission v., 674
 Blount v. Rizzi, 572
 Board of Overseers of the Bar v. Ebitz, 335, 337
 Board of Trustees of State University of N.Y. v. Fox, 567
 Bolger v. Youngs Drug Products Corp., 570
 Bonus Oil Co. v. American Petrofina Co., 136
 Booher v. Goldsborough, 710
 Boos v. Barry, 561
 Boyd v. United States, 718
 Boyle v. Landry, 688
 Bradley v. Richmond School Board, 538
 Brady v. Maryland, 314
 Brandenburg v. Ohio, 686, 689
 Brandt, United States v., 302
 Branham v. Norfolk & W Ry., 477
 Branzburg v. Hayes, 687
 Breard v. Alexandria, 532, 550
 Breschi, Attorney Grievance Commission v., 673, 674
 Bridges v. California, 686, 699, 700
 Brinton v. Department of the State, 378
 Britton, State v., 194
 Brown v. Mississippi, 725
 Brown v. St. Joseph County, 475, 477
 Brown v. United States, 686
 Browning Debenture Holders Comm. v. DASA Corp., 156
 Bruno Sales Inc. v. Chrysler Motor Corporation, 136
 Buckles, People v., 630
 Buckley v. Gray, 329
 Buckley v. Valeo, 518, 539
 Burdick v. United States, 633
 Burr, United States v., 389
 Burson v. Freeman, 569

Butler v. United States, 275
 Button v. Day, 513
 Button, NAACP v., 535, 537, 538, 542,
 688

C

C.F. Merrit v. Faulkner, 165
 California v. FPC, 512
 Callahan v. Board of Bar Overseers, 575
 Cannon v. U.S. Acoustics, 153, 187
 Cantor v. Grievance Commission, 630
 Cantwell v. Connecticut, 518, 523
 Capitol Broadcasting Co. v. Mitchell, 523
 Carey v. Population Services Interna-
 tional, 623
 Caro v. Smith, 327
 Carter & Johnson, In re, 450
 Carter-Herman v. Philadelphia, 480
 Cenco Inc. v. Seidman & Seidman, 419
 Central Hudson Gas & Electric Corp. v.
 Public Service Commission of New
 York, 555, 562, 567
 Ceramco Inc. v. Lee Pharmaceuticals,
 133, 134, 135, 138, 143
 Chappell, People v., 677
 Chase v. Robson, 690
 Checker v. Chrysler, 136
 Cheek, In re, 618
 Chicago Bar Assn. v. Reed, 630
 Chicago Council of Lawyers v. Bauer,
 686
 Chicago Council of Lawyers v. Cunning-
 ham, 686
 Childress, Attorney Grievance Commis-
 sion v., 673, 675
 Chrysler Motor Corp. v. Toffany, 136
 Chrysler Motor Corporation v. Estree
 Company, 136
 Chrysler Realty Corporation, 132
 Chugach Electric Association v. United
 States District Court, 135
 CIBI-GEIGY, State v., 475, 477
 Cicone v. URS Corp., 327, 329
 Cincinnati Bar Assn. v. Florez, 280
Cincinnati Bar Assn. v. Statzer, 279
 Cinema 5 Ltd. v. Cinerama Inc., 75, 108,
 153
 Cintolo, United States v., 446
 Ciravolo v. The Florida Bar, 726

Cisneros, United States v., 302
 City of Cleveland v. Cleveland Elec. Illu-
 minating, 165
 City of Renton v. Playtime Theatres Inc.,
 569
 Clark v. United States, 201, 269, 395
 Clark, Attorney Grievance Commission
 v., 676
 Clark, In re, 696
 Cleveland Bar Assn. v. Cleary, 280
 Cleveland Bar Assn. v. Cox, 280
 Clinton, United States v., 376
 Coastal States Gas. Corp. v. Dept. of En-
 ergy, 378, 391
 Cohen v. California, 550, 557, 570
 Cohen v. Disciplinary Board, 690
 Cohen v. Hurley, 514, 717, 721, 722
Cohen, In re, 78, 112
 Cole v. Appalachian Power Co., 477
 Cole v. Lumbermen's Mutual Casualty
 Company, 322
 Comer v. Smith's Transfer Corp., 302
 Committee on Professional Ethics and
 Conduct of Iowa State Bar, Assn. v.
 Crary, 272
Commonwealth v. Curtis Mitchell, 274
 Commonwealth v. Dyer, 210
 Commonwealth v. Lopes, 736
 Commonwealth v. Sefranka, 580
 Commonwealth v. Twitchell, 581
 Compromise v. Contest in Legal Contro-
 versies, 324
 Coniglio v. Highwood Services Inc., 149
 Consolidated Edison Co. of New York v.
 Public Service Commission of N.Y.,
 572
 Consolidated Theatres v. Warner Bros.
 Circuit Management Corp., 137
 Consolidated Theatres v. Warner Broth-
 ers, 127, 161
 Container Corp., United States v., 510,
 511
 Continental Co. v. Union Carbide, 513
 Continental Oil Co. v. United States, 199
 Control Data Corp. v. International
 Business Machines, 149, 150, 184
 Cooke v. Laidlaw, Adams & Peck Inc.,
 109
 Cory, State v., 196

- Costarelli v. Commonwealth, 474
 Cover v. State, 672
 Cox v. Louisiana, 676
 CPI Builders Inc. v. Impco Technologies Inc., 327
 Craig v. Harney, 686
 Cramp v. Board of Public Instruction, 688
 Cueto, United States v., 446
 Cummings v. National Shawmut Bank, 580
 Curtis Mitchell, Commonwealth v., 274
 Curtis, United States v., 264, 267
 Cuyler v. Sullivan, 225, 270
- D**
 Daniels v. Alexander, 666
 Dawson, In re Petition of, 634, 668
 Dawson, State v., 192
Debock v. State, 664, 726
 Delcourt v. Belgium, 49
 DeLeo v. Ernst & Young, 436
 Dennis, United States v., 686
 Dent v. Kaufman, 477, 479
 Dent v. West Virginia, 722
 DiCarlo Dodge Inc. v. Chrysler, 136
 Dileo, In re, 640
 Disciplinary Counsel v. Fowerbaugh, 280
 Disciplinary Counsel v. Levin, 281
 Disciplinary Counsel v. Markijohn, 282
 Disciplinary Counsel v. Wrenn, 283
 Disoctrade v. Wyeth-Ayerst Int'l Inc., 108
 Dodd v. Florida Bar, 267
 Doe v. A. Corp., 161
 Doe, In re, 23
 Dollar v. Long Mfg., 429
 Duncan v. Merrill Lynch, Pierce, Fenner & Smith, 153
 Dupree v. Better Way Inc., 192
 Dupree, People v., 690
 Dyer, Commonwealth v., 210
- E**
 E.F. Hutton & Company v. Brown, 143
 Eddleman, In re Petition of, 634
 Eddleman, In re, 632, 634
 Elkins v. United States, 377
Emle Industries v. Pantentex, 18, 60, 94, 113, 123, 133, 135, 138, 143, 144, 147, 148, 150, 153, 157, 169, 172, 178, 207
- Empire Linotype School v. United States, 127, 130
 Enstam, United States v., 446
 Estate of Greenberg, In re, 623, 625
 Estes v. Texas, 687, 689
 Ezrin, Attorney Grievance Commission v., 677
 Ezzes v. Ackerman, 136
- F**
 F.D.I.C. v. Clark, 419
 F.D.I.C. v. O'Melveny & Meyers, 419
 Fair Automotive Repair Inc. v. Cae-X Serv. Sys., Inc., 477
 Farber, In re, 687
 Fareta v. California, 222
 Feaster, United States v., 446
 Fellner v. Bar Association of Baltimore City, 677
 Findlay/Hancock Cty. Bar Assn. v. Filkins, 280
 Fire Ins. Exchange v. Bell by Bell, 329, 330
 Fleischer v. A. A. P., Inc., 177
 Florida Bar v. Massfeller, 727
 Florida Bar v. McHenry, 566
Florida Bar v. Went For It Inc., 565
 Florida Sate Board of Architecture v. Seymour, 727
 Fowerbaugh, Disciplinary Counsel v., 280
 Francis v. United Jersey Bank, 419
 Francis, In re, 742
 Freeman v. Chicago Musical Instrument Co., 152, 153, 157
 Friedland, In re, 697
 FTC v. Proctor & Gamble, 518
 FTC v. Shaffner, 380
- G**
 Gannett Co. Inc. v. DePasquale, 687
 Garcia v. Rodney, Dickson, Sloan, Atkin & Robb, 416
 Garden State Bar Association v. Middlesex City Ethics Commission, 685
 Gardner v. North Carolina State Bar, 602
 Garland, Attorney Grievance Commission v., 673
 Garrison v. Louisiana, 705

- Garrity v. New Jersey, 718, 725
 Garvey, In re, 678
 Gas-A-Tron of Arizona v. Union Oil
 Company of California, 136
 Gasparinetti v. Kerr, 688
 Gatti, In re, 340
 Gault, In re, 74
 General Dynamics Corp. v. Rose, 171
 General Mill Supply Co. v. SCA Services
 Inc., 162
**General Motors Corporation v. City of
 New York**, 13, 133, 134, 135, 138, 143,
 144
 Gentile v. State Bar of Nevada, 570, 580
 Gertz v. Robert Welch Inc., 523
 Gibson v. Berryhill, 514
 Gillard, In re, 76
 Gillock, United States v., 378
 Gladston v. McCarthy, 634
 Glenn, Attorney Grievance Commission
 v., 674
 Glueck v. Johnathon Logan Inc., 110
Goldfarb v. Virginia State Bar, 138, 490,
 508, 521, 523, 531, 548, 623, 687
 Goldsborough, Attorney Grievance
 Commission v., 673
 Goodman v. Kennedy, 327, 331
 Government of India v. Cook Industries
 Inc., 156
 Grand Jury Investigation, In re, 416
 Grand Jury Subpoena Duces Tecum, In
 re, 384, 385, 393, 427
 Grayned v. Rockford, 580, 688
 Greitzer & Locks v. Johns-Manville
 Corp., 164
 Greyson, United States v., 272
 Grievance Comm. Of the Bar of Hart-
 ford County v. Rottner, 75
 Griffin v. California, 725
 Griffin v. State, In re, 709
 Grimes v. Hoschler, 617
 Grinnell Corp., United States v., 149
 Groot, In re, 619
 Gutfreid, In re, 415
- H**
- Haddon v. Walters, 384
 Hale v. Henkel,
Hale, In re, 611, 627
- Hamilton v. Municipal Court for
 Berkley-Albany Judicial District, 690
 Hammond, United States v., 22
 Handelman v. Weiss, 143
 Handsome v. Rutgers University, 617
 Hansen v. Anderson, Wilmarth & Van
 Der Maaten, 329
 Hansen, In re, 76
 Harrellson, United States v., 212
 Harris v. New York, 263
 Harris v. United States, 200
 Harrison, NAACP v., 535, 536
 Havens, United States v., 269
 Hawker v. New Jersey, 722
 Hayden v. Warden, 200
 Head v. New Mexico Board, 531
 Headley v. Baron, 727
 Heller, In re, 618
 Higbie, In re, 713
 Hilo Metals v. Learner Co., 149
 Himmel, In re, 739
Hinds, In re, 662, 683, 717
Hinson-Lyles, In re, 638, 639
 Hirschkop v. Snead, 686
 Hirschkop v. Virginia State Bar, 687
Hiss, In re Alger, 614, 628
 Hiss, United States v., 628
 Hollis, Attorney Grievance Commission
 v., 677
Hull v. Celanese Corporation, 13, 133,
 136, 137, 138, 141, 171
 Hunt v. Blackburn, 213
 Hurly v. Modern Cont. Constr., 476,
 477, 483
 Hustler Magazine v. Falwell, 561
- I**
- Imperiali v. Pica, 73
In the Matter of Fordham, 573
 In re Abrams, 341
 In re Ades, 541, 552
 In re Air Crash Disaster Roselawn Ind.,
 477
In re Alger Hiss, 614, 628
 In re American Continental/Lincoln S&L
 Sec. Litig., 417
 In re Anastaplo, 724
In re Applicant, 25, 612, 621
 In re Application of Smith, 632, 634, 668

- In re Application of Spriggs, 634
 In re Application of Strand, 634, 635, 669
 In re Application of Van Wyck, 630
 In re Ashy, 642
 In re Balla v. Gambro Inc., 204
 In re Baron, 695
 In re Bates, 516
In re Beiny, 276, 310
 In re Bithoney, 696
 In re Carter & Johnson, 450
 In re Cheek, 618
 In re Clark, 696
In re Cohen, 78, 112
 In re Dileo, 640
 In re Doe, 23
 In re Eddleman, 632, 634
 In re Estate of Greenberg, 623, 625
 In re Farber, 687
 In re Francis, 742
 In re Friedland, 697
 In re Garvey, 678
 In re Gatti, 340
 In re Gault, 74
 In re Gillard, 76
 In re Grand Jury Investigation,, 416
 In re Grand Jury Subpoena Duces Tecum, 384, 385, 393, 427
 In re Griffin v. State, 709
 In re Groot, 619
 In re Gutfreid, 415
In re Hale, 611, 627
 In re Hansen, 76
 In re Heller, 618
 In re Higbie, 713
 In re Himmel, 739
In re Hinds, 683
In re Hinson-Lyles, 638, 639
 In re Jackson, 88
 In re James, 88
 In re Kagan, 217
 In re Keiler, 696, 702
 In re Knickerbocker Steamboat Co., 194
 In re Koenig, 632, 634
 In re Kone, 630
 In re Lacey, 697
In re Lindsey, 375, 397, 409
 In re Machinery Corp., 377, 414
 In re May, 630
 In re McLain, 77
 In re Michael Lawrence Bernoudy Jr., 642
 In re Morris, 741
 In re Motion of Dow Jones, 410
 In re Oliver, 74, 690
 In re Paulsruide, 697
 In re Petition of Dawson, 634, 668
 In re Petition of Eddleman, 634
 In re Petition of Morrison, 634, 668
In re Primus, 532, 548, 570, 585, 604
 In re Public Defender Service, 443
 In re R.M.J., 555, 558, 559, 562, 567, 593
 In re Raggio, 697
 In re Richard Roe, 212
 In re Rouss, 761, 727
In re Ruffalo, 1, 9, 17, 37, 193, 580, 663, 681, 682, 696, 730
 In re Rules of Professional Conduct, 596
In re Ryder, 195, 229
In re S. (A Barrister), 7, 39, 43, 44, 490, 524
 In re Sawyer, 662, 686, 698, 699
 In re Schleimer, 696
 In re Scott, 444
 In re Sealed Case (Espy), 376, 388, 392, 396, 418, 430
 In re Sealed Case (Secret Service), 378
 In re Sealed Case (D.C. Cir. 1998), 392, 423
 In re Sealed Case (D.C.Cir.1982), 676
 In re Singer, 638, 640
 In re Sledge, 489
 In re Smith, 534
 In re Smock, 695
 In re Stoler, 620
 In re Stump, 623, 631, 634, 665
 In re Sympson, 630
 In re Taylor, 630
 In re Von Wiegand, 559
 In re Webb, 674, 678
 In re White, 373
In re Wilkins, 659, 662, 708, 709
 In re Williams, 659
 In re Wilson, 695
 International Business Machines Corporation v. Levin, 75, 77
 Iowa Supreme Ct. Bd. Of Professional Ethics & Conduct v. Mulford, 682

J

Jackson v. Rogers & Wells, 327
 Jackson v. United States, 228
 Jackson, In re, 88
 Jaffee v. Redmond, 377, 391, 392
James A. Neal v. William Jefferson Clinton, 11, 715
 James, In re, 88
 Jeffrey v. Pounds, 75
 Johnson v. Cadillac Plastic Group Inc., 347, 476, 477, 478
 Jones v. Barnes, 445
 Jones v. Clinton, 380, 715, 716
 JP Morgan Chase Bank v. Liberty Mutual Insurance Company, 109
 Judson, United States v., 194
 Justice John v. Spaulding, 246
 Justices of Applegate Division v. Erdmann, 697

K

Kagan, In re, 217
 Kane, In re, 630
 Kaplan, United States v., 446
 Kassis v. Teachers Ins. And Annuity Association, 110
 Kastiger v. United States, 728
 Kavanaugh, State v., 686
 Keiler, In re, 696, 702
 Kent, Attorney Grievance Commission v., 673
 Kepler v. State Bar of California, 632
 Kessler v. Department of Public Safety, 617
 Kesselhaust v. United States, 158, 164, 192
 Kimm v. Rosenberg, 723
 Kissinger v. Reporters Comm. For Freedom of the Press, 384
 Kleinfeld v. State, 209
 Knickerbocker Steamboat Co., In re, 194
 Koenig, In re, 632, 634
 Kone, In re, 630
 Konigsberg v. State Bar, 618, 686, 699
 Kotikoff v. Community News, 686

L

Lacey, In re, 697
 Lama Holding Company v. Shearman & Sterling, 110

Landry v. Daley, 688
 LaSalle National Bank v. County of the Lake, 157, 190
 Lashinsky, State v., 688
 Laskey Brothers of West Virginia Inc. v. Warner Brothers Pictures, 134, 137, 163, 168, 197
 Lassiter v. Dept. of Social Services, 162, 196
 Lathrop v. Donohue, 513
 Law Students Research Council v. Wadmond, 514
 Leary v. United States, 630
 Leeson v. General Council of Medical Education and Registration, 46
 Lehman v. Shaker Heights, 550
 Leon v. State Bar of California, 557
 Lerner v. Casey, 724
 Levin, Disciplinary Counsel v., 281
 Levy v. Superior Court, 327
 Liddy, United States v., 304
 Lincoln Savings and Loan Association v. Wall, 411
 Linde, Thomson, Langworthy, Kohn & Van Dyke v. Resolution Trust Corp., 378
Lindsey, In re, 375, 397, 409
 Linmark Associates Inc. v. Willingboro, 519
 Local Union No. 10 etc., Plumbers etc. v. Graham, 705
 Long Island Motors Inc. v. Chrysler, 136
 Long, United States v., 223, 228, 275
 Lopes, Commonwealth v., 736
 Louisville Bar Assn. v. Hubbard, 553
 Lowery v. Cardwell, 267
 Lurie v. Florida State Board of Dentistry, 727

M

Mackey, United States v., 379
 Malloy v. Hogan, 717, 718, 730
 Maple Flooring Assn., 510
 Marbury v. Brooks, 736
 Marc de Meyere v. Belgium, 48
 March v. Committee of Bar Examiners, 631, 634
 Marco v. Dulles, 131
 Maressa v. New Jersey Monthly, 685, 698

- Markijohn, Disciplinary Counsel v., 282
 Marshall v. District of Columbia Government, 617
 Martindale, State v., 696
 Maryland State Bar Association v. Hirsch, 677
 Maryland v. Soper, 724
Matter of Erdman, 703
 May, In re, 630
 McAlister v. Henkel, 228
 McArthur v. State Bar of California, 634
 McCandless v. Great Atlantic & Pacific Tea Co., 156
McClure v. Thompson, 180, 184, 217
McCourt Company v. FPC Properties, 59, 62, 73
 McKeever v. Israel, 165
 McKesson & Robbins Inc., United States v., 512
 McKissick v. United States, 267
 McLain, In re, 77
 McLaughlin v. Old Colony Trust Co., 680
 Mead Data Center Inc. v. United States Department of the Air Force, 378
 Meinhard v. Salmon, 706
 Melson v. United States, 198
 Merritt v. Faulkner, 199
 Messing, Rudavsky & Weliky PCP v. President and Fellows of Harvard College, 347, 348, 473, 481
Meyerhofer v. Empire Fire and Marine Insurance Co., 179, 203, 216
 Michael Lawrence Bernoudy Jr., In re, 642
 Middlesex Ethics Commission v. Garden State Bar Association, 685
 Mine Workers v. Illinois Bar. Assn., 537, 538, 539, 540, 548
 Miranda v. Arizona, 718, 725
 Molecular Technology Corporation v. Valentine, 416
 Monsanto, United States v., 446
 Montague & Co. v. Lowry, 511
 Morality v. Legality, 318
 Morris, In re, 741
 Morrison v. Brandeis v. Brandeis Univ., 482, 484
 Morrison, In re Petition of, 634, 668
 Motion of Dow Jones, In re, 410
 Motor Mart Inc. v. Saab Motors Inc., 135, 139, 169
 Mulhern v. Roach, 580
 Murdock v. Pennsylvania, 518
- N**
 NAACP Inc v. Beecher, 538.
 NAACP v. Alabama, 535, 541
 NAACP v. Allen, 538
 NAACP v. Button, 535, 537, 538, 542, 688
 NAACP v. Harrison, 535, 536
 National Assn. of Real Estate Boards, United States v., 512
 National Sec. Archive v. Archivist of the United States, 385
 Neal v. Clinton, 663
 Nebraska Press Association v. Stuart, 686
 Nelson, State v., 697
 New York Times Co. v. Sullivan, 518, 705
 Niesig v. Team I., 475, 476, 477, 478, 479, 483, 484
Nix v. Whiteside, 219, 245, 249, 261, 276
 Nixon v. Administrator of General Services, 625
 Nixon v. Fitzgerald, 393, 394
 Nixon v. United States, 388
 Nixon, United States v., 375, 377, 392
 NLRB v. Gissel Packing Co., 518, 523
 Norris v. United States, 223
 Novo Terapeutisk Laboratorium A/S v. Baxter Travenol Laboratories Inc., 153, 157, 190
- O**
 O’Keefe v. McDonnell Douglas Corp, 23
 O’Rourke v. Darbishire, 210
 Office of the President v. Office of Independent Counsel, 385
 Ohio State Bar Assn. v. Reid, 279
Ohralik v. Ohio State Bar Assn., 541, 545, 555, 556, 560, 562, 567, 573
 Oliver, In re, 74, 690
 Olsen v. Smith, 513, 517
 Omene, United States v., 223, 228
 Oregon State Medical Society, United States v., 514
 Orloff v. Willoughby, 723

Orlowski v. Dominick's Finer Foods Inc.,
475, 476, 479
Orrv. Turco Mfg. Co. Inc., 708
Overnite Transp. Co. v. Chicago Indus.
Tire Co., 166
Oxford Systems Inc. v. CellPro Inc., 110

P

Painter, Attorney Grievance Commission
v., 674
Parker v. Brown, 508, 513, 517
Parker v. Levy, 695
Parnell v. Smart, 332
Patriarca v. Center for Living & Working
Inc., 347
Paul v. Davis, 625
Paulsrude, In re, 697
Pavicich v. Santucci, 329
Pennwalt Corporation v. Plough Inc., 75,
107
People v. Barte, 275
People v. Belge, 180, 214, 216
People v. Buckles, 630
People v. Chappell, 677
People v. Dupree, 690
People v. Stover, 705
Petition of Dawson, In re, 634, 668
Petition of Eddleman, In re, 634
Petition of Morrison, In re, 634, 668
Petrol Stops Northwest v. Continental
Oil Company, 136
Philadelphia National Bank, United
States v., 512
Phillip Morris Inc., United States v.,
115
Phillips-Farr v. Commonwealth, 479
Pilling v. General Motors, 429
Pittsburgh Press Co. v. Human Relations
Commission, 523, 532, 541
Planned Parenthood Association of
Chicago v. Kempiners, 164
Planned Parenthood League of Mass.
Inc. v. Operation Rescue, 474
Plante v. Gonzalez, 625
Police Dept. of Chicago v. Mosley, 543
Polk v. Brown, 136
Powell v. Alabama, 723
Powell, Attorney Grievance Commission
v., 673

Pratt v. National R.R. Passenger Corp.,
475, 477
Precision Specialty Metals v. United
States, 248
Primus, In re, 532, 548, 570, 585, 604
Proctor, Attorney Grievance Commission
v., 673
Procunier v. Martinez, 686
Public Defender Service, In re, 443
**Purcell v. District Attorney for Suffolk
District**, 208

Q

Quercia v. United States, 302

R

R.M.J., In re, 555, 558, 559, 562, 567,
593
Radovich v. National Football League,
512
Raggio, In re, 697
Railroad Trainmen v. Virginia Bar, 537,
548
Raimondo, United States v., 446
Randall v. Brigham, 40
Redd v. Shell Oil Company, 136
Reeves v. Ernst Young, 413
Reitz v. Mealy, 617
Rendina, State v., 726
Richard Roe, In re, 212
Richardson v. Hamilton International
Corporation, 135, 136, 143, 207
Richardson, Attorney Grievance Com-
mission v., 683
Richmond Newspapers Inc. v. Virginia,
686
Rico v. Mitsubishi Motors Corp., 183,
233
Rocco Motors v. Chrysler, 136
Roe v. Wade, 623, 625
Rosman v. Shapiro, 109
Ross, State v., 690
Rouss, In re, 761, 727
Rubin v. Coors Brewing Co., 567
Ruffalo v. Mahoning County Bar Associ-
ation, 40, 59, 74
Ruffalo, In re, 1, 9, 17, 193, 580, 663,
681, 682, 696, 730
Rules of Professional Conduct, In re, 596

- Russo v. Byrne, 227
 Ruszcyk v. Secretary of Pub. Safety, 476, 482, 484
 Ryder, *In re*, 195, 229
- S**
S. (A Barrister), *In re*, 7, 39, 43, 44, 490, 524
 S.E.C. v. Frank, 416
 S.E.C. v. Gulf & Western Industries, 380
 S.E.C. v. National Student Marketing Corporation, 416
 Sabghir, Attorney Grievance Commission v., 677
 Sanborn v. State, 275
 Sawyer, *In re*, 662, 686, 698, 699
 Schleimer, *In re*, 696
 Schloetter v. Railoc of Indiana, 153
 Schmerber v. California, 721
 Schoendorf v. U.D. Registry, 332
 Schware v. Board of Bar Examiners, 618
 Schware v. Board of Examiners, 722
 Scott, *In re*, 444
 Scott, United States v., 223, 228
 Sealed Case (Espy), 376, 388
 Sealed Case (Secret Service), 378
 Sealed Case, 392, 396, 418, 430,
 Sealed Case (D.C.Cir.1998), 392, 423
 Sealed Case (D.C.Cir.1982), 676
 Sears, Roebuck & Co. v. Goldstone & Suldalter, 661
 Sefranka, Commonwealth v., 580
 Selling v. Radford, 41
 Semler v. Oregon State Board of Dental Examiners, 514, 517, 531, 548
Shafer v. Berger, 251, 326
Shapero v. Kentucky Bar Association, 487, 553, 567, 569
 Shapiro v. United States, 722, 725
 Shearson, Lehman Bros. v. Wasatch Bank, 475
 Sheinbein, Attorney Grievance Commission of Maryland v., 670
 Sheiner, United States v., 140
 Shelton v. Tucker, 688
 Sheppard v. Maxwell, 686, 689, 703
 Sherbert v. Verner, 692
 Shevin v. Byron, Harless, Saffer, Reid & Associates Inc., 625
 Shockley v. State, 275
 Siguel v. Trustees of Tufts College, 482
 Silva v. Silva, 629
Silver Chrysler Plymouth Inc. v. Chrysler Motors Corp., 8, 77, 132, 142
 Singer v. United States, 686
 Singer, *In re*, 638, 640
 Sledge, *In re*, 489
 Slochower v. Board of Education, 724
 Slotkin v. Citizens Casualty Company of New York, 330
 Smith v. California, 518
 Smith v. Goguen, 688
 Smith, *In re* Application of, 632, 634, 668
 Smith, *In re*, 534
 Smock, *In re*, 695
 Society of Jesus of New England v. Boston Landmarks Commission, 578
 Socony-Vacumn Oil Co., United States v., 512
 South-Eastern Underwriters Assn., United States v., 512, 513
 Sperry v. Florida, 514
Spevack v. Klein, 29, 40, 664, 717, 730
 Spratley v. Sate Farm Mutual Insurance Co., 349
 Spriggs, *In re* Application of, 634
 Standard Oil, United States v., 127, 130, 134, 150
State Bar of Arizona v. Richard G. Kleindienst, 659, 662, 710
 State Comp. Ins. Fund v. WPS Ins., 239
 State of Maryland v. Sol Sheinbein, 681
State rel. Sowers v. Olwell, 9, 190
 State v. Britton, 194
 State v. CIBI-GEIGY, 475, 477
 State v. Cory, 196
 State v. Dawson, 192
 State v. Kavanaugh, 686
 State v. Kociolek,
 State v. Lashinsky, 688
 State v. Martindale, 696
 State v. Nelson, 697
 State v. Rendina, 726
 State v. Ross, 690
 State v. Sullivan, 193
 State v. Van Duyne, 686

- State v. White, 194
 State v. Whiteside, 273
 Stoler, In re, 620
 Stover, People v., 705
 Strand, In re Application of, 634, 635, 669
 Strawser v. Exxon Co. USA, 475, 476, 477
 Strickland v. Washington, 218, 272
 Stump, In re, 631, 634, 623, 665
 Sullivan, State v., 193
 Supreme Court of New Hampshire v. Piper, 730
 Swidler & Berlin v. United States, 391, 392
 SWS Financial Fund A v. Salomon Brothers Inc., 110
 Sympson, In re, 630
- T**
- T.C. Theatre Corp. v. Warner Brothers Pictures, 26, 134, 137, 138, 143, 168, 207
 Tax Analysts v. IRS, 378, 391
 Taylor, In re, 630
 Terra Int'l. Inc. v. Mississippi Chem. Corp., 475
 Theard v. United States, 40, 41
 Thornhill v. Alabama, 518, 705
 Three Juveniles v. Commonwealth, 212
 Tijerina, United States v., 686
 Toledo Bar Assn. v. Kramer, 280
 Trammel v. United States, 377, 391, 392
 Trane v. Smith, 153
 Trans-Lux Distr. Corp. v. Board of Regents, 705
 Trone v. Smith, 153
 Twitchell, Commonwealth v. 581
- U**
- U.S. v. McDonnell Douglas Corporation, 347
 (Under Seal), United States v., 379
 United Mine Workers v. Illinois Bar Assn., 542
 United Shoe Mach. Corp., United States v., 199, 379
 United States v. Enstam, 446
 United States v. (Under Seal), 379
 United States v. Aluminum Co. of America, 149
 United States v. Arlington, 446
 United States v. AT&T, 389
 United States v. Bifield, 264
 United States v. Brandt, 302
 United States v. Burr, 389
 United States v. Cintolo, 446
 United States v. Cisneros, 302
 United States v. Clinton, 376
 United States v. Container Corp., 510, 511
 United States v. Cueto, 446
 United States v. Curtis, 264, 267
 United States v. Dennis, 686
 United States v. Feaster, 446
 United States v. Garcia, 690
 United States v. Gillock, 378
 United States v. Greyson, 272
 United States v. Grinnell Corp., 149
 United States v. Hammond, 22
 United States v. Harrellson, 212
 United States v. Havens, 269
 United States v. Hiss, 628
 United States v. Johnson, 194
 United States v. Judson, 194
 United States v. Kaplan, 446
 United States v. Liddy, 304
 United States v. Long, 223, 228, 275
 United States v. Mackey, 379
 United States v. McKesson & Robbins Inc., 512
 United States v. Monsanto, 446
 United States v. National Assn. of Real Estate Boards, 512
 United States v. Nixon, 375, 377, 392
 United States v. Omene, 223, 228
 United States v. Oregon State Medical Society, 514
 United States v. Philadelphia National Bank, 512
 United States v. Phillip Morris Inc., 115
 United States v. Raimondo, 446
 United States v. Scott, 223, 228
 United States v. Sheiner, 140
 United States v. Socony-Vacuum Oil Co., 512
 United States v. South-Eastern Underwriters Assn., 512, 513

United States v. Standard Oil, 127, 130, 134, 150
 United States v. Tijerina, 686
 United States v. United Shoe Mach. Corp., 199, 379
 United States v. Valenzuela-Bernal, 384
 United States v. Werner, 198
 United States v. White, 200
 United States v. Williams, 381
 United States v. Willis, 194
 United States v. Wisniewski, 140
 United States v. Women's Sportswear Assn., 511
 United States v. Wyatt, 302
 United States v. Yellow Cab Co., 511
 United States v. Zolin, 210, 211, 395
 United Transportation Union v. Michigan Bar, 537, 542, 548
 University of PA v. EEOC, 377
 Upjohn Co. v. United States, 391, 392, 442

V

Valentine v. Chrestensen, 532, 566
 Valenzuela-Bernal, United States v., 384
 Van Dwyne, State v., 686
 Van Wyck, In re, Application of, 630
 Vanderline, Attorney Grievance Commission v., 677
 Virginia Pharmacy Board v. Virginia Consumer Council, 517, 523, 524, 526, 531, 532, 538, 541, 548, 561
 Virginia State Bd. of Pharmacy v. Virginia Citizens Consumer Council Inc., 566
 Vlandis v. Kline 630
 Von Wiegand, In re, 559

W

W.E. Bassett Company v. H.C. Cook Company, 138
 Watts v. Indiana, 310
 Webb v. State, 675, 678
 Webb, In re, 674, 678
 Weibrecht v. Southern Ill Transfer Inc., 477
 Weider Sports Equip. Co. v. Fitness First Inc., 477

Weinberger v. Salfi, 630
 Werner, United States v., 198
 Westinghouse Electric Corporation v. Gulf Oil Corp., 153, 187
 Westinghouse Electric Corporation v. Kerr-Mc-Gee Corporation, 110, 154, 155, 157, 163, 193, 197
 Whalen v. Roe, 625
 White, Attorney Grievance Commission v., 677
 White, In re, 373
 White, State v., 194
 White, United States v., 200
 Whiteside v. Scurr, 263
 Whiteside, State v., 273
 Widoff v. Disciplinary Board, 690
 Wilcox v. Johnson, 262, 273
Wilkins, In re, 659, 662, 708, 709
 Williams v. Governors of Florida Bar, 630, 634
 Williams v. Taylor, 228
 Williams, In re, 659
 Williams, United States v., 381
 Williamson v. Lee Optical Co., 517, 531, 548
 Willis, United States v., 194
 Wilson, In re, 695
 Wisniewski, United States v., 140
 Wolfe v. Department of Health & Human Services, 384
 Women's Sportswear Assn., United States v., 511
 Wrenn, Disciplinary Counsel v., 283
 Wright v. Group Health Hosp., 475, 477, 478, 484
 Wyatt, United States v., 302

X-Z

Yellow Cab Co., United States v., 511
 Youngston Sheet & Tube Co. v. Sawyer, 393
 Zauderer v. Office of Disciplinary Council of Supreme Court of Ohio, 567, 571
 Ziegler v. United States, 194

Foreword

Real Ethics for Real Lawyers is designed to teach professional responsibility by solving practical problems.¹ This approach is informed by my experience as a litigation partner in a major law firm, and my experience advising real law firms and lawyers about actual ethical dilemmas.

Too often “legal ethics” are taught in a vacuum, as if they were somehow technical subjects that stand apart from the moral values that you grew up with. This is dangerous. “Legal ethics” are, in the end, about fundamental responsibility. This book deliberately links issues of “legal ethics” directly to such fundamental values, i.e. “real ethics”. But the book does not overlook the economics of the profession, nor those topics of particular concern to new lawyers, such as how to start a law practice, bar admissions, bar discipline and malpractice liability.

There is a big emphasis here on preparing problems for oral argument, just as real lawyers would, and on solving difficult dilemmas by asking questions and debating options, again, just like real lawyers. Long experience in teaching professional responsibility in four law schools has taught me that class debate is the best way to learn the rules, and, more importantly, prepares you for what awaits in practice. It is also more fun.

This book can be used as a free-standing professional responsibility course, but can also be paired with my short book, *Lawyers and Fundamental Moral Responsibility* (Lexis Nexis, Anderson, Cincinnati, 1995) (Hereafter “*Fundamental Moral Responsibility*”). The two books together can be covered in a three-hour course. *Real Ethics for Real Lawyers* teaches the relevant rules and legal doctrines. *Fundamental Moral Responsibility* addresses practical problems from the perspective of ethical philosophy, and provides a philosophical “tool box” for resolving moral dilemmas. Taken together, the books provide the new lawyer with both a legal and an ethical framework for resolving the real problems of practice.

This book can also be paired with other special perspectives. For example, it could be combined with a new book by my distinguished colleague and friend, R. Michael Cassidy, *Prosecutorial Ethics* (Thompson/West, St. Paul, 2005). There are many other possibilities.

1. For a leading philosophical basis of this approach, see John M. Rist, *Real Ethics: Reconsidering the Foundations of Morality* (Cambridge, 2002). “The major issues in moral philosophy, as Plato realized, are comparatively simple and cannot be fudged.” *Id.*, p. 8. This book also lends itself to another approach that derives from early Jesuit philosophy, and has been ably advocated by a most valued friend and colleague, Paul R. Tremblay. This is casuistry, “a form of ethical reasoning that involves the close analysis of particular cases, seeking ethical guidance in an inductive manner, rather than deductively through the application of theory.” See Paul R. Tremblay, “Shared Norms, Bad Lawyers, and the Virtues of Casuistry,” 36 *University of San Francisco L. Rev.* 659, 661 (2002).

Unlike many other texts, this book does include selected professional rules, including an appendix containing the *Massachusetts Rules of Professional Conduct*. Obviously, these rules change, and may have to be updated, but the convenience for students of an integrated book is very great. Occasional supplements, such as the latest ABA rule pamphlet, are easy to provide.

As with almost every teacher in this field, I am deeply indebted to my special friend and colleague, Andrew L. Kaufman. His original edition of *Problems in Professional Responsibility* (Boston, 1976) essentially invented this genre. I have borrowed many ideas from that great classic, and its subsequent editions, including the excellent new edition prepared with another most valued friend and colleague, David B. Wilkins.

Andrew Kaufman's example as a teacher, a scholar, a true friend, and a lawyer dedicated to the standards of his beloved profession, has been an inspiration to me for more than thirty years. His admirers are legion, and his influence for the good has been profound.

Another special friend has been my colleague Judith A. McMorrow, co-author with me of the *Federal Law of Attorney Conduct* (Lexis Nexis, San Francisco, 2001). She teaches responsibility, honesty and loyalty by example. Such teachers and friends are priceless, and I owe more to my colleagues at both Boston College and Harvard than I can ever say. It has been a great privilege to know them, and to learn from their wisdom and idealism.

Essential to this book has been the enthusiasm and invaluable insights of my Boston College research assistants, James-Ryan Fagan '06, Kristen A. Johnson '06, James E. Kruzer '07, and Michael E. Pastore '07, and the generous support of my Dean, John H. Garvey, and my good friend Charles D. Ferris '61. I would also like to specially thank Patricia Tarabelsi, Editorial Assistant to the Monan Professor, for her tireless efforts in preparing these materials. Her intelligence and hard work are evident on every page.

Acknowledgments

Page

- 21 Andrew L. Kaufman, “Who Should Make the Rules Governing Conduct of Lawyers in Federal Matters,” originally published in 75 *Tul. L. Rev.* 149-164 (2000). Reprinted with permission of the *Tulane Law Review* Association and Andrew L. Kaufman.
- 32 ff. American Bar Association, *Model Rules of Professional Conduct* (2004). Selected rules. Reprinted with permission of the American Bar Association. Copies of *ABA Model Rules of Professional Conduct, 2004* are available from Service Center, American Bar Association, 750 North Clark Street, Chicago, IL, 60610, 1-800-285-2221.
- 36 ff. American Bar Association, *Model Code of Professional Responsibility* (1983). Selected sections. Reprinted with permission of the American Bar Association. Copies of *ABA Model Code of Professional Responsibility* are available from Service Center, American Bar Association, 321 North Clark Street, Chicago, IL 60610, 1-800-285-2221.
- 50 Coquillette, Daniel R. and McMorrow, Judith P., “Toward an Ecclesiastical Professional Ethic: Lessons from the Legal Profession,” *Church Ethics and Its Organizational Context: Learning From the Sex Abuse Scandal in the Catholic Church*, edited by Jean Bartunek, Mary Ann Hinsdale and James F. Keenan (Rowman & Littlefield Publishers, Inc., 2005). Reprinted with permission.
- 82 Frank, John P., “The Legal Ethics of Louis D. Brandeis,” 17 *Stanford L. Rev.* 683 (1965). Reprinted with permission of the *Stanford Law Review*.
- 94 Berenson, Alex, “A Caldron of Ethics and Asbestos,” *New York Times*, March 12, 2003, p. c.1. © 2003 by the New York Times Co. Reprinted with permission. Photograph of Joseph F. Rice, © Douglas Levere Photo. Reproduced with permission.
- 98 Donovan, Karen, “When Big Law Firms Trip Over Their Own Clients,” *New York Times*, October 3, 2004, p. 5. © 2004 by the New York Times Co. Reprinted with permission.
- 100 Association of the Bar of the City of New York, Formal Opinion No. 2003-03. Reprinted with permission of the Committee on Professional and Judicial Ethics of the Association of the Bar of the City of New York.
- 167 Gibeaut, John, “Telling Secrets,” 90 *ABA Journal* 39 (Nov. 2004). Reprinted with permission.
- 213 Nelson, Bryce, “Ethical Dilemma: Should Lawyers Turn in Clients?” Copyright *Los Angeles Times*, July 2, 1974, p. 1, col. 1. Reprinted with permission.

Page

- 258 American Law Institute, *Restatement of the Law Third, The Law Governing Lawyers*, §98. Copyright 2000 by the American Law Institute. Reprinted with permission. All rights reserved.
- 285 Freedman, Monroe, "The Professional Responsibility of the Criminal Defense Lawyer: The Three Hardest Questions," 64 *Mich. L. Rev.* 1469 (1966). Reprinted with permission of the author and the publisher. [Professor Freedman has considerably expanded and updated his views in Monroe Freedman & Abbe Smith, *Understanding Lawyers' Ethics* (3rd ed., 2004) (Matthew Bender).]
- 295 Frankel, Marvin, "The Search for Truth: An Umpireal View," 123 *U. Pa. L. Rev.* 1031 (1975). Reprinted with permission of the *University of Pennsylvania Law Review* and the Williams S. Hein & Company, Inc.
- 314 Rubin, Alvin, "A Causerie on Lawyer's Ethics in Negotiation," 35 *La. L. Rev.* 577 (1975). Reprinted with permission of the *Louisiana Law Review*.
- 332 Maine Board of Overseers of the Bar Ethics Opinion 146 (December 9, 1994). Reprinted with permission. Maine Bar Ethics Opinion ¶146 has been overruled and withdrawn, and replaced by Opinion ¶172, issued March 7, 2000.
- 338 District of Columbia Opinion 323 (2004). Reprinted with permission.
- 397 Sommer, A.A., "The Emerging Responsibilities of the Securities Lawyer," 1974-75, Fed Sec. L. Rep. ¶79, 631. © 1974-1975, CCH INCORPORATED. All Rights Reserved. Reprinted with permission from (FEDERAL SECURITY LAW REPORTER).
- 404 Diemer, Mary S., "SEC Continues Considering 'Noisy Withdrawal' Rule," 28 *Litigation News*, Vol. 28, No. 6, September 2003. Reprinted by Permission.
- 406 Simon, William H., "The Kaye Scholar Affair: The Lawyer's Duty of Candor and the Bar's Temptations of Evasion and Apology," *Law and Social Inquiry* (1998) pp. 243-282. Reprinted with permission of the author and the University of Chicago Press.
- 438 Judson, George, "Hostility to Whistle-Blowers Is Cited in A-Plant Problems," *New York Times* (August 8, 1996), Metropolitan Desk, Section B., p. 7. © 1996 by the New York Times Co. Reprinted with permission.
- 439 Zacharias, Fred, "Lawyers as Gatekeepers," 41 *San Diego L. Rev.* 1387. Copyright 2004 San Diego Law Review. Reprinted with permission of the author and the *San Diego Law Review*.
- 453 Federal Bar Association, Professional Ethics Committee, Opinion 73-1 "The Government Client and Confidentiality," 32 *Fed. B.J.* 71 (1973). Reprinted with permission.
- 457 Stone, Alan A., "The Myth of Advocacy," *Hospital & Community Psychiatry*, Dec. 1979; 12: 819-822. Reprinted with permission from Hospital and Community Psychiatry, Copyright 1979. American Psychiatric Association.
- 462 Committee on Professional Judicial Ethics, Association of the Bar of the City of New York, Opinion No. 80-23. Reprinted with permission of the Committee on Professional and Judicial Ethics of the Association of the Bar of the City of New York.

Page

- 467 Van Natta, Don, Jr., "Agents' Talk with Ex-Intern Provokes Angry Exchanges," *New York Times*, January 24, 1998, p. A10. © 1998 by the New York Times Co. Reprinted with permission.
- 470 Boynton, Paul D., "Talking to Manager in Bias Suit Not Unethical," 29 *Massachusetts Lawyer's Weekly*, 1, 31 (December 18, 2000). Reprinted with permission.
- 581 Rattigan, David, "Would you know this man if you saw him?" *Massachusetts Bar Association Lawyers Journal*, p. B1, B9 (October, 1999). Reprinted with permission.
- 583 James E. Morgan, "Internet Advertising Raises Ethical Concerns," *Litigation News*, Vol. 26, No. 6, September, 2001. Reprinted with permission of the author and the American Bar Association.
- 585 Notice, "How to Start and Run a Successful Solo or Small-Firm Practice," MBA-MCLE (May, 2004), p. 1. Reprinted with permission.
- 586 Lawrence J. Fox, "Dan's World: A Free Enterprise Dream; An Ethics Nightmare," *The Business Lawyer*, Vol. 55, No. 4, August 2000. Reprinted with permission.
- 731 Massachusetts Board of Overseers, "How to File a Complaint," published on <http://www.mass.gov/obcbbo/complaint.htm> (site visited Feb. 1, 2005). Reprinted with permission.
- 735 Massachusetts Client Security Board Announcement (2004). Reprinted by permission of The Massachusetts Clients' Security Board of the Supreme Judicial Court.
- 737 ABA Committee on Evaluation of Disciplinary Enforcement, "Problem 31 - Reluctance on the Part of Lawyers and Judges to Report Instances of Professional Misconduct," published in *Problems and Recommendations in Disciplinary Enforcement* ("The Clark Report"), 1970. Reprinted with permission.
- 741 American Bar Association Formal Opinion 03-431 (August, 2003). Reprinted by permission of the American Bar Association. Copies of ABA Ethics Opinions are available from Service Center, American Bar Association, 321 North Clark Street, Chicago, IL 60610, 1-800-285-2221.

