

Ethical Issues in Family Representation

Barbara Glesner Fines

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To David and Dan

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PREFACE

Ethical issues that arise in family representation are often unique to the field. Many of the core issues are simply not addressed by professional regulation. Thus, we find a growing number of specialized codes of conduct to meet the unique demands of representing family members. One of the major concerns for reform of family law education has been to address the unique professional responsibility demands of the field. This text is designed to help fill that gap.

Each chapter begins with a statement of learning objectives. In any given class, you and your professor may have different or additional learning objectives for the topics covered. Most doctrinal materials are explained in textual discussions. Cases and other primary source materials are selected to illustrate not only the legal principles but the difficulties of applying those principles. Most sections have a series of questions for your reflection and discussion. While citations may sometimes be provided to give you examples of cases or other materials addressing the issue, reading these materials, while helpful, is neither necessary nor sufficient to answer these questions, as the law is still very much evolving.

In addition, the text provides two types of assignments designed to help you personalize your study. First, because regulation of attorney conduct and regulation of family matters are both areas in which standards differ significantly across the states, you will find “research assignments” throughout the text. An appendix identifies sources you might use to research these and other issues of professional conduct. Second, you will find problems entitled “Portfolio Problems.” These problems are designed to help you extend the learning from the chapter in practice settings. Careful preparation of these portfolio assignments will give you practical tools to use throughout a career in family representation.

A few words about citation conventions: All jurisdictions in the United States except California base their attorney disciplinary rules on the American Bar Association’s Model Rules of Professional Conduct. In this text, these rules will be referred to as “Model Rule X.X.” Sometimes the text will summarize the rules of professional conduct or their comments. In practice, of course, attorneys should always refer to the complete disciplinary rules of their own ju-

risdiction, as reference to the primary sources of regulation is always necessary to insure accuracy and currency of the law, especially as state rules often have significant variations from the ABA models. The Model Rules are on the ABA Web site at www.abanet.org. Where the text refers to “Restatement” the reference is to the Restatement (Third) of the Law Governing Lawyers. Other Restatements will be given their full names.

The appendix contains the full text of model standards. Where the text references these standards, you should read the relevant section.

In editing materials in the text, I have used the following conventions: Modifications of the original materials are indicated by [bracketed phrases]. Where the only modification is deletion of material in the original, I have inserted ellipses, regardless of the length of the deleted material. I have freely deleted citations and footnotes from original materials without indication of the deletion. Original footnotes that have been retained are renumbered to preserve the flow of footnote sequence in the chapter.

This book has benefitted tremendously from so many conversations and correspondences with too many individuals to name. My clients have inspired and challenged me to keep their interests at the center of this book. The students in my Ethics of Family Representation course from 2004 to today have all “test driven” the materials. Most of those students are now practicing law in fields serving families and they, as well as so many members of the bench and bar, have been kind to share their experiences and insights. My colleagues in the family law program have endured countless hours of conversation and read reams of drafts and I am indebted and inspired by them: Professors Mary Kay Kisthardt, Mary Kay O’Malley, Nancy Levit, Mary Weir, Peter Raith, and June Carbone. Dean Ellen Suni has provided substantial assistance for the project, both as Dean in supporting the project and as a professional responsibility colleague. Student research assistants who have contributed to the book include Steven Skinner, Mark Haefner, Orron Hill, Kevin Kelly, Alison Trimble, and Elizabeth Hodges Williams. The errors are my own alone.

I hope this text will help you to become a better learner, lawyer, and agent of justice. If you have comments, questions, or suggestions, I am always interested. My email address is glesnerb@umkc.edu.