

# Legal Ethics in the Practice of Law



# Legal Ethics in the Practice of Law

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FIFTH EDITION

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To Jesse, Gabriel, and Maya (RZ)

For Chuck and Griz—Who are always there (LRC)

To Madeleine and Liam, who inspire me

To Lori, for everything (TC)



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# Acknowledgments

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We owe considerable thanks to the team at our new publisher, Carolina Academic Press, which stepped in after purchasing the LexisNexis law-school-book line just as we began to prepare this new edition. Keith Sipe, Linda Lacy, Scott Sipe, Keith Moore, Ryland Bowman, and Tasha Gervais have all managed to follow the bouncing balls of publishing transition with kindness and responsiveness. Dana Pepper and Erin Matthews, among others, have quickly worked to understand this volume and explain it to our academic colleagues.

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Richard Zitrin

Liz Ryan Cole

Timothy Casey

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# Acknowledgments (Previous Editions)

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The creation of this fourth edition was made more challenging and interesting by all the sea changes in the world of legal ethics that have occurred since 2007. We could not have kept up with these changes without the help of many people, and we are indebted to each. Over the years we have had the help of many colleagues—academics and practitioners alike. Ethics professors Steve Berenson, Kathleen Clark, Steve Derian, Mary Jo Eyster, Monroe Freedman, Peter Joy, Drew Kershen, Rory Little, Judith Maute, Morris Ratner, Cindy Slane, and especially Bob Kuehn, now at Washington (St. Louis), have provided valuable comments over the years.

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Richard Zitrin  
Carol M. Langford  
Liz Ryan Cole

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# Preface to Fifth Edition

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For students and those teachers who have not previously read this book, the first part of our Introduction, which follows, serves to explain our practice-oriented, “real world,” problem-driven approach to the discipline of legal ethics and the book’s organizational structure. We suggest you begin there, before reading this Preface.

This Preface provides those with some working familiarity with our first four editions a brief overview of what has changed—both in the world of legal ethics and in this volume.

Changes in the legal ethics world continue to come quickly. In comparison with other core law-school courses, ethics is still a relatively young discipline. Forty years ago, there was very little focus on legal ethics as part of the law school curriculum, and very few law professors considered it their primary focus. Today, it is a fully-formed discipline, having grown not only in stature as a stand-alone course, but also in relation to the dramatic expansion of clinical and other experiential courses that integrate legal ethics and skills training.

The pace of rules changes has slowed between this edition and the last. Before the fourth edition, we saw the adoption of the ALI’s Restatement (Third) of the Law Governing Lawyers, wholesale revisions of the ABA’s Model Rules of Professional Conduct in 2002 and 2003, followed by substantial revisions in 2012 and 2013 on the interface of technology and ethics. Today, the biggest changes are ever-evolving conflict of interest rules, allowing broader “advance waivers,” better defining screening and imputation, and seeing every state adopt some version of the ABA rules. Technological ethics advance so fast that our technology problem (Problem 6) needs wholesale updating each edition.

Perhaps the two biggest changes since the last edition have been the final approval—over a decade in the making—of ABA-style rules in California, and the explosion of experiential programs that integrate legal ethics. We are modifying our teacher’s manual substantially to track the California changes. While the new California rules adopt the ABA numbering system, there are still many differences between the ABA rules and those of this iconoclastic state. As far as new and more widespread experiential programs, we have always tried to keep clinical courses in mind. Now, we have consciously tried to “up our game” to ensure that this book provides what students and teachers in experiential programs most need.

This Fifth Edition keeps intact the core of what has always worked well in previous editions. Throughout, we have maintained our predisposition for academically

rigorous materials that are both accessible and readable. We have included more narratives of our own authorship, which not only gives us the opportunity to present issues exactly as we wish but also makes the text tighter.

Without exception, every Problem (for we continue to organize the book by Problems) is changed from the last edition. Many have mostly nips, tucks, and updated citations, as our discipline continues to mature. Some, though, have undergone substantial revisions, such as the problems on technology, prosecutorial obligations, and conflicts of interest. We've replaced a fair number of older articles with newer ones or narrative text, but we've kept some older pieces that continue to have resonance and currency. And, as always, we've maintained the last edition's structure and "full coverage" approach. We don't expect courses to use this material cover-to-cover. We *do* expect that if it's important to the discipline of legal ethics, you will find it here.

We hope you, both professors and students, find the changes useful and enjoyable. Anyone with questions or comments can reach us at [zitrinr@uchastings.edu](mailto:zitrinr@uchastings.edu), [lcole@vermontlaw.edu](mailto:lcole@vermontlaw.edu), and [tcasey@cwsl.edu](mailto:tcasey@cwsl.edu). As always, we encourage you to contact us.

Richard Zitrin  
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October 2018

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