Preface to the Second Edition

As we noted in the Foreword to the first edition of this book, trial and appellate lawyers face numerous professional responsibility challenges. Often the problems they face arise suddenly or in circumstances that are at best difficult. We have long appreciated these facts because we are trial and appellate lawyers, and we have had the privilege and pleasure of representing many fine litigators who have been accused of misjudgments made in circumstances that would have tested any lawyer. The second edition of this book accordingly remains first and foremost for practicing lawyers. We have again incorporated in the text practical examples and offer practical advice whenever possible.

We have styled the book as an anthology, with the chapters tracing the life of a lawsuit from start to finish. Each chapter is intended to cover a key aspect of litigation in depth. We have attempted to compartmentalize the subjects so that readers do not have to jump back and forth between chapters to understand the principles and rules in play. This results in some small amount of overlap of material in a few chapters, but we think the ease of use that comes from compartmentalizing subjects is far more important to readers than any minor redundancy. We have added a new chapter on compensating fact witnesses, we have significantly revised and re-worked the chapter on ethics in e-discovery, and we have substantially updated all other chapters. In discussing the various subjects, we have defined “professional responsibility” broadly to include not only legal ethics, but also the related subjects of sanctions and, in some instances, professional liability. In terms of ethics rules, we have focused on the ABA’s Model Rules of Professional Conduct for the sake of practicality and uniformity. We acknowledge that California has not adopted the Model Rules and that states’ rules of professional conduct may differ from the Model Rules in various respects. We have attempted to note differences to the extent reasonably possible.

We hope this book is authoritative, but we recognize that professional responsibility is a dynamic subject and that answers to seemingly straightforward questions can vary substantially depending on the facts and the law of the jurisdiction. Accordingly, we have attempted to provide ample citations to authority to guide readers in their own research.

We owe special debts of gratitude to Barbara O’Donnell of the ABA/TIPS Publishing Board who first encouraged us to undertake this project, and to our
original editor at the ABA, Rick Paszkiet, who provided advice, guidance, and support in developing the First Edition of this book. We owe further gratitude to Sarah Orwig, who so capably edited this Second Edition. We have, over the years, profited from conversations with many colleagues and our opinions expressed throughout the book have been influenced and shaped by many thoughtful lawyers with whom we have worked and collaborated. These lawyers are too numerous to mention by name, but we are deeply grateful regardless. We offer profound thanks to our families, who tolerated our writing when they had other designs on our time.

Finally, we welcome readers’ comments, criticisms, and suggestions. Like lawyers everywhere, we continue to learn each day.

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