Contents

About the Editors xi
About the Authors xiii
Preface xxi

1 Lawyering in a Time of Great Change
   Lucian T. Pera  1

2 Confidentiality and Security
   in a Modern World
   Claudia Rast  11

   Introduction  11

   Model Rule 1.1: Competence
      Relevant Opinions and Rulings from the Bench  13
      Relevant Opinions and Rulings from the Bar  14
      Summary  15

   Model Rule 1.4: Communication; Model Rule 1.6:
      Confidentiality of Information  19
      Relevant Opinions and Rulings from the Bench  21
      Relevant Opinions and Rulings from the Bar  22
      Summary  24

   Model Rule 3.6: The Duty of Protecting Client
      Confidences with Regard to the Media  24
      Relevant Opinions and Rulings from the Bench  29
      Relevant Opinions and Rulings from the Bar  32
      Summary  35

   Model Rule 5.1: Responsibilities of a Partner
      or Supervisory Lawyer; Model Rule 5.2: Responsibilities
      of a Subordinate Lawyer  35
   Model Rule 5.3: Responsibilities Regarding Nonlawyer
      Assistants  37
      Relevant Opinions and Rulings from the Bench  38
Relevant Opinions and Rulings from the Bar | 39
Summary | 42
Model Rule 7.1: Communication Concerning a Lawyer’s Services; Model Rule 7.2: Advertising | 43
Relevant Opinions and Rulings from the Bar | 44
Summary | 46

3 Modern Conflicts of Interest | 47

*Vicki J. Wright*

The Model Rules | 48
Model Rule 1.7(a) | 48
Model Rule 1.7(b) | 49
Model Rule 1.9 | 50
The Practical Process for Conflict Identification | 52
Waivers | 54
Conflicts and Limitations | 55
Positional Conflicts | 58
The Pro Bono Case | 60
The Data | 61
Failures | 63
Examples | 63
Controls | 67
Conclusion | 68

4 Ethical Considerations in Environmental Crime Prosecution and Defense | 69

*Jordan Gross and Walter James*

Introduction | 69
Prosecutor | 71
The Threshold Question: Which Rules Apply? | 71
Communicating with Persons Represented by Counsel | 76
Discovery in Multiagency, Multijurisdictional, and/or Parallel Civil/Regulatory Proceedings | 79
Protecting Confidential Business Information of Targets and Defendants 80
Defense Counsel 81
  The Threshold Question: Are You Competent? 81
Joint Representation 83
Responding to Government Subpoenas and Requests for Information 86
Dealing with Unrepresented Persons 88

5 Representing the Organizational Client on Environmental Matters 89
Irma S. Russell and Joan MacLeod Heminway

Introduction 89
Representing the Organizational Client 91
  The Lawyer’s Advisory Role 91
Corporate Counsel 93
An Increasingly Global World 94
The Environment Context 96
Challenges in Representing Organizational Clients on Environmental Matters 98
Corporate Law, Policy, Theory, and Culture 100
  Basic Principles of Corporate Governance 101
Theories of Corporate Governance 106
Corporate Culture 110
Corporate Legal Compliance 111
  Environmental Laws 113
Federal Incentives for Compliance 115
Sarbanes-Oxley 117
Dodd-Frank 118
The Regulation of Organizational Client Representations under the Model Rules 119
The Attorney-Client Privilege 124
Conclusion 125
### 6 The Lawyer’s Role in Representing Communities 127
*Alexandra Dapolito Dunn and Hana Heineken*

- Introduction 128
- The Client and Scope of Representation 129
  - “Standard Conception” of Lawyering 130
  - Definition of Client 130
- Scope of Representation 132
- Communication and Protecting Confidentiality 133
- Community Lawyering and Professional Competence 135
  - Lawyering for Community Empowerment 136
  - Competent Representation 137
  - Professional Judgment and Candid Advice 140
- The Unique Role of the Tribal Lawyer 143
- Conclusion 145

### 7 Working with Other Professionals and Their Codes of Professionalism 147
*Dan Chorost, Pamela R. Esterman, and Jonathan Kalmuss-Katz*

- Conflicts among Attorneys’ and Consultants’ Ethical Codes of Conduct 148
  - Attorneys’ Obligations to Their Clients 148
  - Engineers’ Obligations to the “Safety, Health, and Welfare of the Public” 150
  - Other Professional Codes of Conduct 152
  - Hypothetical: Disclosure in the Absence of “Reasonably Certain Death or Substantial Bodily Injury” 154
- Retention of Environmental Consultants and Critical Retainer Provisions 155
- The Use of Experts in Transactions 159
- The Use of Experts and Consultants in Environmental Litigation 162
- Benchmarking Best Practices 167
8  The Impact of Social Media and Cloud Computing on Environmental Law 169
Scott J. Sachs and Peter Serrano

Social Media Use for Advertising 170
Social Media Implications for the Judiciary 175
Social Media and Attorney Specialization 176
Cloud Computing and the Concept of the Virtual Law Office (Multijurisdictional Practice) 177
Massachusetts Bar Association Ethics Opinion 12-03 181
New York State Bar Association Ethics Opinion 1025 184
New York State Bar Association Ethics Opinion 1020 186
Third-Party Access to Social Media and Potential Reliance on Publications by Third Parties 186

9  Special Considerations for Government Lawyers 191
Jeffery S. Dennis

Do Government Lawyers Bear a Higher Responsibility to the “Public Interest”? 192
Defining the Lawyer-Client Relationship 195
When the Government Is the Client 195
Who Is the Client? 195
Allocating Decision-Making Power between the Lawyer and Government Client 199
Representing Government and Private Clients Simultaneously 199
Special Considerations Regarding Confidentiality and Attorney-Client Privilege 201
Conflicts of Interest 208
Former Public Officials or Government Employees 209
Current Government Officers or Employees 212
Definitions of “Matter” and “Personally and Substantially” 216
Communicating with Government Lawyers 219
Conclusion: The Importance of Governmental Lawyer Ethics to Government and Private Lawyers Alike 220
10 International Practice and Ethical Considerations 223

Roger Martella

<table>
<thead>
<tr>
<th>Chapter</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Assessing Protections on Confidential and Privileged Information</td>
<td>226</td>
</tr>
<tr>
<td>Communicating to Enhance Confidentiality Protections</td>
<td>231</td>
</tr>
<tr>
<td>Determining Qualifications to Advise on International Issues</td>
<td>234</td>
</tr>
<tr>
<td>Minding the Cultural Gap</td>
<td>237</td>
</tr>
<tr>
<td>Considering Human Rights Consequences</td>
<td>240</td>
</tr>
<tr>
<td>Conclusion</td>
<td>242</td>
</tr>
<tr>
<td>Table of Cases</td>
<td>243</td>
</tr>
<tr>
<td>Index</td>
<td>249</td>
</tr>
</tbody>
</table>