

Preface

The regulation of lawyers through rules of ethics, statutes, and the common law present an area of interest and concern to lawyers generally. Perhaps there is special concern for environmental lawyers because issues of legal ethics arise frequently in environmental practice and because there is real potential for public safety concerns to be presented in environmental cases. The stakes in environmental matters are often high and involve issues of public health and safety. While ethical issues are to be taken seriously in all cases, the need for cautious and thorough analysis of ethical questions is of paramount importance when issues of safety are implicated.

Sometimes environmental practice seems an endless stream of ethical problems. Should a lawyer meet with residents who are considering bringing a toxic tort case before it is filed? Should the lawyer or one of the residents announce the meeting? Should a lawyer inform his client when he believes the client's claim is morally wrong? Are contingent fee agreements appropriate between a lawyer and a client in an environmental tort action? What is the lawyer's ethical obligation to reveal dangers to public safety? When does the lawyer representing the client have a duty to assert the attorney-client privilege to reject a claim by a nonclient to information in an environmental report? How should a lawyer analyze conflicts rules when a Superfund site involves hundreds of potentially responsible parties?

The importance of ethics to the practice of environmental law made us see a book specifically addressing legal ethics in the context of environmental law as an endeavor of particular importance. The book I wrote in this area was published by the ABA in 2003, substantially before many technological advances that we take for granted today. The widespread use of cloud computing, crowd sourcing, and increased mobility and other advances in technology such as remote monitoring of environmental compliance and sensors are now the new reality for this field of practice. While that book, *Issues of Legal Ethics in the Practice of Environmental Law*, continues to provide durable principles and analysis of the ABA Model Rules and ethics opinions, an update on new technology and new guidance is clearly due.

This book has a broader focus than specific rules of ethics. After all, the law has an impact on ethical and moral questions. While each state establishes the rules of legal ethics applicable to the practice of law in that jurisdiction, states generally start from the ABA Model Rules of Professional Conduct in formulating the rules for lawyers in that state. The common law and statutory law continue to play an important role in how lawyers should analyze challenges that arise in practice in fulfilling their professional duties.

The views of each author are their own. No author included purports to speak for a client or an employer. Different points of view are valued and we have tried to maintain the author's own unique voice and way of communicating the sweep and import of each concept covered. In our editing suggestions, we have sought to help chapter authors communicate in simple and straightforward language to allow the reader efficient access to the information and views offered.

Our goal has been to organize chapters to deal with major areas relating to ethics challenges: developing an awareness of ethics issues that may arise in environmental law questions, conflicts of interest, the duty of confidentiality in environmental law, special issues of competency in the context of environmental practice, multijurisdictional practice and concerns of legal ethics, multidisciplinary practice and ethics, the interaction of ethics issues with criminal law regimes, ethics issues and tort law, trends in litigation of lawyer liability in environmental law, human rights and the environment, comparative environmental systems in the United States and other countries, consideration of ethics issues in the emergency response context, and the role of the lawyer in working with consultants and the media. If you have questions about the book, we hope you will contact us and the chapter authors.

The editors are grateful to the chapter authors who devoted their time and expertise to provide us with the law and insights found in the chapters in this book. In addition, the editors gratefully acknowledge the input of numerous peer reviewers. These reviewers are environmental law practitioners, scholars, and lawyers with expertise in the rules of professional conduct. Among these reviewers were Robert M. Charles, Jr., J. Brett Grosko, Randolph L. Hill, Professor Sean O'Brien, Claudia Rast, Kenneth J. Warren, Russell R. Yurk, Michael J. Zimmer, and the reviewers of the ABA Center for Professional Responsibility. Finally, we thank those who support the work of the ABA Section of Environment, Energy, and Resources.

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