Preface

The authors first met as advisors to the American Law Institute’s Restatement of the Law Governing Lawyers, a project only ethics geeks can appreciate—sitting in windowless conference rooms for dozens of meetings over 13 years of debate and compromise before the final volumes were launched. Next came a sojourn on the American Bar Association’s Ethics 2000 Commission, where we served as commissioners debating and updating the contours of the Model Rules of Professional Conduct.

Following these developments in the law, we soon began a wonderful and unique collaboration, combining the perspectives of a longtime practitioner (Larry Fox) with those of a longtime academic (Susan Martyn). We began by writing books for law students, Traversing the Ethical Minefield, first published by Aspen in 2004 and now in its fourth edition, and The Law Governing Lawyers: Model Rules, Standards, Statutes and State Rules of Professional Conduct, also published by Aspen annually with a third author, W. Bradley Wendel. Most recently we completed a short volume entitled Representing Clients: An Ethics Guide for Clinical Law Students and Emerging Lawyers, published this year by Foundation Press.

We also authored several versions of a legal ethics guide for clients, the most recent being How to Deal with Your Lawyer: Answers to Commonly Asked Questions, published by Oxford University Press in 2008. And we are so pleased to have spent time on making legal ethics accessible to practicing lawyers as well. We began with our first volume, Red Flags: Legal Ethics for Lawyers, published by The American Law Institute in 2005 and 2010. Next came The Ethics of Representing Organizations: Legal Fictions for Clients, published by Oxford in 2010. And now, we have completed this volume for litigators.

Fair Fight follows the course of a litigation-client representation, fleshing out the lawyer’s fiduciary obligations and some of the bodies of law that limit client advocacy (crime, fraud, procedural, and evidentiary rules). The book then digs into a number of specifics in representing clients pretrial, at trial, and on appeal. We conclude with a chapter on judicial ethics. Each chapter includes text addressing the basic law
that governs a topic, followed by engaging Q & A’s that detail the issues in specific contexts. Footnotes add hundreds of cites to relevant legal authority.

You will find that this book confronts you, the conscientious lawyer, with a myriad of rules and cases that must govern your conduct as an ethical lawyer. Some of these essential legal obligations also grant you a measure of discretion under specific circumstances. As you represent your clients zealously within the bounds of the law, please remember that just because you may file a lawsuit, rely on an oral fee agreement, speak to the press, or advertise on your website does not mean you should. Similarly, if proceeding with a representation requires you to seek a confidentiality or conflicts waiver, you can choose instead to decline or withdraw from the representation. Our clients rely on us for our competence but also for all of our other qualities, including conscientious exercise of our discretion that serves to make us loyal and trusted advocates and advisors.

We envision *Fair Fight* as a useful and somewhat entertaining legal ethics resource. You can use it in at least three ways. First, consider this volume an introduction and refresher to the field of professional responsibility. Use a chapter-by-chapter approach, as you would with any book. Second, you might use *Fair Fight* as a reference to assist you in identifying, exploring, and resolving ethics issues as they arise in representing litigation clients. We recommend you begin by reading Chapter 1 to understand the layout and the topics covered in the book. Then we invite you to use the table of contents and the index to search for issues or topics you encounter when you represent clients. Third, you might view *Fair Fight* as a series of stories designed to help you understand typical ethics issues that arise in litigation practice. You can do this by reading the Q & A’s throughout the volume and then referring to the footnotes and adjacent text material for more information.

As we refined and completed this volume, we realized how much we owe hundreds of lawyers like you for sharing your needs, your points of view, and your hypotheticals with us. We hope you will enjoy *Fair Fight* and find it a useful resource in your practice.

Larry Fox and Susan Martyn
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