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# LEGAL ETHICS: THE LAWYER'S DESKBOOK ON PROFESSIONAL RESPONSIBILITY, 2005-2006 EDITION

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This one volume work on legal ethics contains an excellent overview, discussion and explanation of the development—from their genesis through the latest modifications—of the American Bar Associations' Model Rules of Professional Conduct (the "Model Rules"). The authors have thoroughly and diligently explained, and placed in historical and contemporary context, the current text of the Model Rules.

Although the book is sub-titled "The Lawyer's Deskbook on Professional Responsibility," it is not—and is presumably not intended to be—a reference tool for use by the typical lawyer in his or her daily practice. Lawyers are principally regulated by the individual states, each of which adopts its own rules of legal ethics. To the best of this reviewer's knowledge, there is not a single state that has adopted the Model Rules in exactly the language propounded by the ABA. True, some come close, but most states make at least a few changes and some states have not (or at least, not yet) even adopted the Model Rules at all. This includes the two states with, respectively, the largest and second largest number of lawyers, California and New York; California has a unique system of statute-based regulation, and New York has its own version of the Model Code of Professional Responsibility. An example of a true "deskbook for lawyers"—necessarily focused on the *actual* rules of professional responsibility as adopted and applied in a particular state—is Professor Roy Simon's annually updated "Simon's New York Code of Professional Responsibility Annotated," which is an essential tool for New York lawyers.

That said, this book is a very handy reference for those practitioners who have need of detailed background information on the origin, policy framework and legislative intent of the drafters of the Model Rules. This is a growing population of lawyers, including academics who teach professional responsibility as well as practitioners in the rapidly expanding group of lawyers who represent and advise other lawyers, whether in the realms of professional discipline, partnership and business organization, or inter- and intra-law firm and partner disputes. An important and fast growing sub-set of that group are the in-house counsel at larger, and increasingly, mid-sized law firms.

The second way in which this book can serve as a "deskbook" lies in the book's thirteen appendices (making up almost a third of its nearly 2000 pages). These appendices include the subordinate model rules for the profession propounded by the ABA, such as the Model Rules for Fee Arbitration, for Mediation of Lawyer Client Disputes, the Standards for Imposing Lawyer Sanctions, and the Model

Rules for Lawyer Disciplinary Enforcement. A number of states have adopted at least some of these rules in some form, but most states have not. In the latter, larger group of states, these important subsidiary regulations may be a significant source of otherwise unavailable guidance.

Substantively, the book presents a fair-minded summary of the issues addressed in the Model Rules. By and large, it seems not to take sides in disputed territory (*e.g.*, whether non-refundable retainers should be permissible; the relationship between the Model Rules and civil liability; and the nature and scope of the appropriate exceptions to the duty to preserve client confidences and secrets in Model Rule 1.6). Instead, the book focuses on the positions taken in the Model Rules on these topics and identifies the issues that are unresolved. In a few places, it was surprising to find that this new edition seemed to be behind the times. For instance, in referring to the American Law Institute's Restatement of the Law Governing Lawyers, the book acknowledges (page 24, Section 1-4(d)) that the Restatement was finalized in 2000, but the book still refers to the numbering in the final Official Draft (not the numbering used in the finalized Restatement itself). In an otherwise faultless summary of the ethical rules governing the use of "Email, Cordless Phones, Wireless Web Access and Similar Technology for Confidential and Secret Client Information" (pages 207 – 209, Section 1.6-2(c)), the authors unfortunately do not address the latest technology to arise in this area—namely, instant messaging, which presents some unique problems to lawyers and to those who manage the retention (and deletion) of the data the lawyers generate.

So, while not a "deskbook" of utility to most practicing lawyers, the book is a valuable reference tool to those who have need to delve deeper than the "black letter" rules of professional ethics in any given jurisdiction. The book will undoubtedly be helpful to anyone seeking to understand the policies that underlie the current version of the Model Rules, which are in many ways the normative ethical rules for the American legal profession, and the compromises those rules sometimes represent.

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