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Preface to the Second Edition

At the time I wrote the original version of this treatise I recognized that motions to disqualify and conflicts of interest in the practice of law are both important subjects; yet, despite this fact, neither had received treatise-length examination. I decided to attempt to kill the proverbial “two birds” by examining both topics

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in a single volume. Over time it became painfully apparent that, while these subjects often intersect, they also have their differences. Perhaps the best way to understand this is to think of “disqualification” and “conflicts” as two overlapping concentric circles of roughly equal size. To the left and right are areas in which their contents are wholly distinct; in the middle is a sizable area in which they overlap.

Disqualification motions are often made on the basis of perceived conflicts of interest – such motions are, in fact, more often made on the basis of putative violations of the applicable conflict of interest rules than for any other reason. However, parties frequently move to disqualify attorneys on other grounds as well. Conversely, while litigators may be most likely to grapple with conflict of interest problems in the course of bringing or defending against a motion for disqualification, it cannot be gainsaid that a violation of the conflict rules can result in disciplinary complaints, disgorgement proceedings, legal malpractice actions, and sundry other consequences.

At first blush, the solution to the problem appeared to be obvious (if time consuming) – the subjects could both be covered by preparing separate treatises; and, to a large extent, that is what I have attempted to accomplish. This Second Edition of *Lawyer Disqualification* focuses specifically on cases in which motions to disqualify lawyers, firms and/or government attorney offices were made, without regard to the bases for those motions. I have also begun preparing a separate treatise devoted to the subject of *Conflicts of Interest in the Practice of Law*, which will examine the case law on conflicts without regard to whether the issue was raised in the context of a disqualification motion, a legal malpractice action, or in a different matter entirely.

Since the two treatises have significant differences, and because there will be times when one can profitably be consulted without reference to the other, I have decided to conclude each book with its own separate index and table of cases. It must be recognized, however, that because there are many instances in which conflicts of interest come to the surface in the context of a

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disqualification proceeding, there will be times when the material that is contained in one book is, to some extent, redundant of what is offered in the other. For example, because obtaining the “informed consent” of a client or former client can be both a prophylactic way of avoiding engaging in conflicted representation, as well as a powerful defense to a disqualification motion, the subject will be examined in both books.

Richard E. Flamm

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