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ETHICS OF MULTIPLE PARTY REPRESENTATION 2019

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1. INTRODUCTION TO TEXAS DISCIPLINARY RULES OF PROFESSIONAL CONDUCT

Ethical rules dictate standard of conduct to which attorneys should conform. They are quasi-statutory and enforced by disciplinary proceedings and represent standards of conduct.¹

Violation of State Bar rules does not create private cause of action.²

2. OVERVIEW OF BASIC CONFLICT OF INTEREST RULES

Conflict of interest rules derive from the need to protect client confidences and assure clients of the lawyer's loyalty. Conflict of interest rules reflect competing concerns:

- Undivided loyalty of lawyer to client.³
- Zealous representation.
- Avoiding representation when attorney's judgment may be distorted by other concerns.
- Enhance effectiveness of legal representation.
- Safeguarding of client information.⁴

¹ See Tex. Disciplinary Rules Prof. Conduct preamble ¶ 10, reprinted in Tex. Gov't Code Ann., tit. 2, subtit. G, app. A (West 2013) (Tex. State Bar R., art. X § 9) ("The Texas Rules of Professional Conduct define proper conduct for purposes of professional discipline."). *Sealed Party v. Sealed Party*, No. CIV.A.H-04-2229, 2006 WL 1207732, at *8 (S.D. Tex. May 4, 2006) ("The [Texas Disciplinary Rules of Professional Conduct] are quasi-statutory and are enforced in disciplinary proceedings by the State Bar."). See D. Beck & A. Roberts, *Legal Malpractice in Texas* Third Edition, 70 Baylor L. Rev. 213, 411-412 (2018).

² Tex. Disciplinary Rules Prof. Conduct preamble ¶ 15; *Dyer v. Shafer, Gilliland, Davis, McCollum & Ashley, Inc.*, 779 S.W.2d 474, 479 (Tex. App.--El Paso 1989, writ denied) ("[A] violation of state bar rules does not create a private cause of action."); *Wright v. Sydow*, 173 S.W.3d 534, 549 (Tex. App.--Houston [14th Dist.] 2004, pet. denied) ("A violation of the Disciplinary Rules does not necessarily establish a cause of action, nor does it void an otherwise valid contract executed outside of the attorney-client relationship.").

³ See Tex. Disciplinary Rules Prof. Conduct Preamble ¶¶ 2-3.

⁴ See Tex. Disciplinary Rules Prof. Conduct R. 1.05(b)(1)(i); *Paxton v. City of Dallas*, 509 S.W.3d 247, 253 n.33 (Tex. 2017) ("Texas Disciplinary Rule of Professional Conduct 1.05(b) imposes a duty of confidentiality and prohibits a lawyer from knowingly revealing confidential information."); *P & M Elec. Co. v. Godard*, 478 S.W.2d 79, 80 (Tex. 1972) ("An attorney may not represent conflicting interests; and may not divulge a client's secrets or

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