Ethical Considerations in Drafting Contracts



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Claude E. Ducloux

Attorney at Law

- 40+ year seasoned attorney
- Board Certified in Civil Trial Law and Civil Appellate Law, Texas Board of Legal Specialization
- Former President, Austin Bar Association
- Received Gene Cavin Award for Lifetime Achievement in Teaching Continuing Education

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Purposes and Goals

- Discuss whether the conduct presented is ethical
- Discuss when a lawyer has a duty to reveal the error of the other lawyer
- Examine when or if the lawyer must consult the client before fixing the error
- Practice strategies to avoid these problems
- Identify special duties when doing business with client



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Concepts We Will Cover

1. **Duty of competence:** Knowing what you're doing.
2. **Conflicts of interest:** The limitations that exist when the lawyer has conflicts affecting the contract in question.
3. **Doing business with client:** The special duties that apply when you or your firm are a party.
4. **Truth in statements to others:** When you have to tell the truth, and when puffery become acceptable in negotiations.

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Concepts We Will Cover

5. **Dealing with unrepresented persons:** The duties that apply when preparing a contract which will be signed by an unrepresented party.
6. **Conduct involving dishonesty, fraud, deceit, and misrepresentation.**

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Rules Covering Our Concepts

1. Duty of competence: **ABA Model Rule 1.1, 1.3; TX Rule 1.01; FL Rule 4-1.1; CA Rule 3-110; MO Rule 1.1, NY Rules 1.1, 1.3** Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation.
2. Conflicts of interest: **ABA Rule 1.7, 1.8, 1.9; TX Rule 1.06; CA Rule 3-310; FL Rule 4-1.7–4-1.10; NY Rule 1.7(a)**
3. Doing business with client: **ABA DR 5-104; TX Rule 1.08(b); CA Rule 3-300; FL Rule 4-1.8; NY Rule 1.8(a)**

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Title search: Ethics of Contract Drafting

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Ethics of Contract Drafting

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"Ethics of Contract Drafting"