

Practicing Law in a Tech-Driven World



Presented by:

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1. KNOW THE ETHICAL STANDARDS GOVERNING A LAWYER'S CONDUCT

In order to ensure we are upholding the ethical standards in the varied roles that our profession entails, we must first be familiar with those standards. There are many sources of guidance, including:

Oath of an Attorney – This basic oath marks the start of a lawyer's ethical obligations. The latest version of the oath, effective May 15, 2015, requires that each person admitted to practice law take an oath to: (1) support the constitutions of the United States and this state; (2) honestly demean oneself in the practice of law; (3) discharge the attorney's duty to the attorney's client to the best of the attorney's ability; and (4) conduct oneself with integrity and civility in dealing and communication with the court and all parties. Tex. Gov't Code § 82.037.

Texas Lawyer's Creed – Issued in 1989 by the Texas Court of Criminal Appeals and the Texas Supreme Court, this declaration of professionalism and civility is primarily aspirational, relying on common understanding and voluntary compliance. "My word is my bond" is an example of the spirit of the Creed.

"I am a lawyer. I am entrusted by the People of Texas to preserve and improve our legal system. I am licensed by the Supreme Court of Texas. I must therefore abide by the Texas Disciplinary Rules of Professional Conduct, but I know that Professionalism requires more than merely avoiding the violation of laws and rules. I am committed to this Creed for no other reason than it is right."¹

Texas Disciplinary Rules of Professional Conduct – Serving as the basic tenets of professionalism for Texas lawyers, these rules establish the minimum standards for ethical conduct for purposes of professional discipline.

Texas Rules of Disciplinary Procedure – The Supreme Court of Texas is responsible for lawyer discipline and has the authority to maintain appropriate standards of professional conduct and to dispose of individual cases of lawyer discipline and disability. The Rules of Disciplinary Procedure establish the system for disciplining an attorney for violations of the Rules of Professional Conduct.

¹ The Texas Lawyer's Creed (November 7, 1989), https://www.legalethictexas.com/Downloads/Texas-Lawyers-Creed/Texas_Lawyers_Creed.aspx (last visited Feb. 15, 2016).

Local Court Rules – Courts are becoming more involved in addressing attorney misconduct, including imposing their own rules of decorum and levying costly sanctions against attorneys who engage in unethical behavior.

ABA Model Rules of Professional Conduct – Adopted by the American Bar Association in 1983, the Model Rules serve as the basis for ethics rules of most states. These rules are the measuring stick by which ethical conduct should be judged.

THE BASICS

Of the various sources of guidance, the Texas Disciplinary Rules of Professional Conduct are the ones that can result in **discipline** of the lawyer. As such, it is important to be familiar with rules and comments comprising the following sections:

- **Client-Lawyer Relationship** – Perhaps the most important, this section discusses a variety of issues related to the Client-Lawyer relationship including the requirement of diligent representation for the client, fees, confidentiality, and conflicts of interest.
- **Counselor** – Governs the advising of clients, requiring “independent professional judgment” and “candid advice.”
- **Advocate** – Guides lawyers participating in the advocacy process and sets standards for lawyers to follow in the presence of the court, including the famous Rule 3.03 on a lawyer’s “Candor Toward the Tribunal.”
- **Non-Client Relationships** – Establishes the rules for interactions with individuals other than clients. In short, a lawyer must use caution when communicating with third parties and unrepresented persons.
- **Law Firms & Associations** – Provides the framework for attorneys practicing in firms and associations. Conduct of one attorney can sometimes be imputed to other attorneys in the firm if proper precautions are not followed. Additionally, Rule 5.05 “Unauthorized Practice of Law” while not attempting to define what is the unauthorized practice of law, reminds lawyers to only practice in jurisdictions where the lawyer is licensed and not to assist others in the unauthorized practice of law.
- **Public Service** – Encourages attorneys to accept the responsibility of representing a client when appointed to do so and provides exceptions to the general obligation to do so.
- **Information about Legal Services** – Describes the rules governing the actual operation of legal practice in Texas, ranging from conventions for the naming of law firms to those governing solicitation and advertisement. As one can imagine, these rules are some of the more interesting rules outlined in the Texas Disciplinary Rules of Professional Conduct, and an area that requires a mastery for any lawyer trying to use new technologies to promote their practice.



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