

Ethics Trivia

Rick Thompson
Hankinson LLP

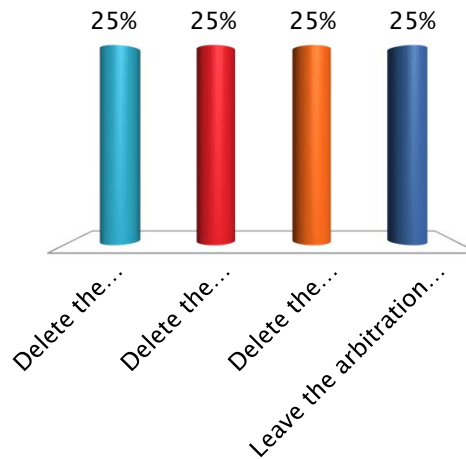
Question 1

Your firm's written, attorney-client employment contract includes an arbitration clause. It provides:

"You and the firm agree that any disputes arising out of or connected with this agreement shall be submitted to binding arbitration in Texas in accordance with the statutes of the State of Texas and the Commercial Arbitration Rules of the AAA (except that this does not apply to any claims made by the firm for the recovery of its fees and expenses)."

What do you advise your firm to do?

- A. Delete the arbitration clause in its entirety because such clauses are unethical and violate public policy.
- B. Delete the parenthetical because it renders the clause so one-sided as to be unconscionable.
- C. Delete the parenthetical because it renders the arbitration clause illusory.
- D. Leave the arbitration clause as is but advise firm that clause must be explained to clients.



- ▶ In *Royston, Rayzor, Vickery & Williams, LLP v. Lopez*, 467 S.W.3d 494 (Tex. 2015)
 - upheld enforceability of arbitration clauses in attorney-client employment contracts.
 - held that parenthetical language does not render the arbitration clause unconscionable or illusory.
- ▶ The Court noted that its decision was “not intended to diminish or address any applicable ethical obligations.”
- ▶ In concurring opinion, Justice Guzman noted that “an attorney has an ethical responsibility to fully and fairly discuss an arbitration agreement with a client.”

- ▶ Rule 1.03(b) provides that a “lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation.”
- ▶ The Professional Ethics Committee has made clear that Rule 1.03(b) “applies when a lawyer asks a prospective client to agree to binding arbitration in an engagement agreement. In order to meet the requirements of Rule 1.03(b), the lawyer should explain the significant advantages and disadvantages of binding arbitration to the extent the lawyer believes is necessary for an informed decision by the client.”

Question 2

Assume that opposing counsel files an opening brief without citing authority directly adverse to your client’s position.

Assume no Texas Supreme Court opinions are directly on point.

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