

YOUR LAWYER, AM I?

University of Texas 28th Annual Labor and Employment Law Conference
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A Very Important Question

Rule 1.01 – Be competent

Rule 1.02 – Encourage

Rule 1.03 – Keep informed

Rule 1.04 – Conscionable fees

Rule 1.05 – Maintain confidence

Rule 1.06 – Be loyal

Rule 1.08 – Be honorable and fair

Rule 1.12 – Escalate concerns

Rule 1.14 – Keep safe property

Rule 2.01 – Give candid advice

Rule 5.04 – Maintain independence

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& MARIN L.L.P.**

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The Rules

Texas Rules Preamble

“These rules do not undertake to define standards of civil liability of lawyers for professional conduct. Violation of a rule does not give rise to a private cause of action nor does it create any presumption that a legal duty to a client has been breached. ... The fact that a rule is a just basis for a lawyer's self-assessment, or for sanctioning a lawyer under the administration of a disciplinary authority, does not imply that an antagonist in a collateral proceeding or transaction has standing to seek enforcement of the rule. Accordingly, nothing in the rules should be deemed to augment any substantive legal duty of lawyers or the extra-disciplinary consequences of violating such a duty.”

Tex. Disciplinary R. Prof. Conduct, Preamble, cmt. 15

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The Rules – Formation

Texas Rules Preamble

“Most of the duties flowing from the client-lawyer relationship attach only after the client has requested the lawyer to render legal services and the lawyer has agreed to do so. For purposes of determining the lawyer's authority and responsibility, individual circumstances and principles of substantive law external to these rules determine whether a client-lawyer relationship may be found to exist. But there are some duties, such as of that of confidentiality, that may attach before a client-lawyer relationship has been established.”

Tex. Disciplinary R. Prof. Conduct, Preamble, cmt. 12

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The Rules – Prospective Clients

Texas Rules Preamble

“Most of the duties flowing from the client-lawyer relationship attach only after the client has requested the lawyer to render legal services and the lawyer has agreed to do so. For purposes of determining the lawyer’s authority and responsibility, individual circumstances and principles of substantive law external to these rules determine whether a client-lawyer relationship may be found to exist. *But there are some duties, such as of that of confidentiality, that may attach before a client-lawyer relationship has been established.*”

Tex. Disciplinary R. Prof. Conduct, Preamble, cmt. 12 (emphasis added)

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The Rules – Prospective Clients

Texas Rules Rule 1.05

“Both the fiduciary relationship existing between lawyer and client and the proper functioning of the legal system require the preservation by the lawyer of confidential information of one who has employed or *sought to employ* the lawyer. Free discussion should prevail between lawyer and client in order for the lawyer to be fully informed and for the client to obtain the full benefit of the legal system. The ethical obligation of the lawyer to protect the confidential information of the client not only facilitates the proper representation of the client but also encourages potential clients to seek early legal assistance.”

Tex. Disciplinary R. Prof. Conduct, R. 1.05, cmt. 1 (emphasis added)

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