

What Should (and Should Not) be in Your Appellate Representation Agreement

**By Scott Rothenberg
Law Offices of Scott Rothenberg**

**31st Annual University of Texas School of Law
Conference on State and Federal Appeals
June 10-11, 2021
Webcast, Austin, Texas**

1

Amendments to Texas Disciplinary Rules of Professional Conduct effective July 1, 2021

Order signed by Supreme Court of Texas 5/25/21

- **Dealing with clients with diminished capacity**
- **Disclosing confidential info to secure legal advice**
- **Disclosing confidential info to prevent suicide**
- **Conflicts for non-profit and pro bono services**
- **Lawyer advertising– non-misleading trade names**
 - **Reporting certain reciprocal discipline**
- **Assignment of judges in disciplinary proceedings**
- **Cessation of practice– appointment of custodian atty**

2

The fiduciary relationship between an attorney and his client extends even to preliminary consultations between the client and the attorney regarding the attorney's possible retention.

***Nolan v. Foreman*, 665 F.2d 738, 739, n.3 (5th Cir. 1982).**

Foreman's fiduciary responsibilities attached when he entered into the discussion of Rick Nolan's legal problems with a view toward undertaking representation.

***Nolan v. Foreman*, 665 F.2d 738, 739, n.3 (5th Cir. 1982).**

**BUT!!! Never approved by Tx. Sup. Ct.
Discussed only in Lopez concur & dissent.**

The attorney-client relationship “arises from the clear and express agreement of the parties about the nature of the work to be done and the compensation to be paid.”

***Gillis v. Provost & Umphrey, LLP*, No. 05-13-00892-CV, 2015 WL 170240, at *10 (Tex. App.— Dallas 2015, no pet.).**

The determination of whether there was a meeting of the minds must be based on an objective standard examining what the parties did and said and not on their alleged subjective states of mind.

***Gillis v. Provost & Umphrey, LLP*, No. 05-13-00892-CV, 2015 WL 170240, at *10 (Tex. App.— Dallas 2015, no pet.).**

Find the full text of this and thousands of other resources from leading experts in dozens of legal practice areas in the [UT Law CLE eLibrary \(utcle.org/elibrary\)](https://utcle.org/elibrary)

Title search: What Should (and Should Not) Be in Your Appellate Representation Agreement

Also available as part of the eCourse

[2021 eConference on State and Federal Appeals](#)

First appeared as part of the conference materials for the

31st Annual Conference on State and Federal Appeals session

"What Should (and Should Not) Be in Your Appellate Representation Agreement"