

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

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Conference on State and Federal Appeals**

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## **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**

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**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).**

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**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.**

4

**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.).**

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**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.).**

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