

“Sign Right Here!”

**A survey of provisions for your
Attorney Client Agreements
from “must-haves” to optional clauses**

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UT CLE FIRST FRIDAY ETHICS PROGRAM -
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Claude E. Ducloux

Attorney at Law

- 45-year seasoned attorney
- Board Certified in Civil Trial Law and Civil Appellate Law, Texas Board of Legal Specialization
- Former President, Austin Bar Association
- Received Gene Cavin Award for Lifetime Achievement in Teaching Continuing Education

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Purposes and goals

- Define the Purpose of the Agreement
- Review Fiduciary Duty and Conflict Rules
- “Must-haves” for a solid contract
- Options
 - Technology
 - Communication
 - Payment options
 - Social media
 - Contingent fees and referrals
- Obtaining client approval!



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“Practicing Law is learning to use the right form” – *said every lawyer in the world at some point.*

...leading to the mistaken belief that every form is safe if you use it for a purpose within the same legal purpose associated with the Title and at least four words of that document.

Thus,

...any “earnest money agreement” should work for that purpose.

...any “bill of sale” should work to transfer title.

...any “release of claims” should cover what I need.

...any “attorney fee agreement” should work as well as another.

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Lawyers and generals

Do we think alike?

“Generals are always planning to fight the last war.”

– Military proverb

“Lawyers always use the same contract until something bad happens.”

– Malpractice proverb

“Lawyers learn of errors in their contracts the same way bugs learn of Mack Truck Windshields.”

– Anonymous



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Lawyers have the **fiduciary duty** to ensure that the client understands the fee agreement, and it is fair and reasonable

- Attorney fee contracts are subject to the same scrutiny by the courts as any fiduciary duty. *Archer v. Griffith* 390 S.W.2d 724 (Tex. 1964).
- And, client need not prove actual damages in order to obtain forfeiture of an attorney's fee, when the attorney breached fiduciary duty. *Burrow v. Arce*, 997 S.W.2d 229 (Tex. 1999).
- *El Apple I, Ltd. v. Olivas*, 370 S.W.3d 757 (Tex. 2012) The Court held that when the lodestar method is used to calculate fees, attorneys must document their time with contemporaneous billing records or other documentation.

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