

# “Sign Right Here!”

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

**Claude E. Ducloux**

Attorney At Law – Austin, Texas

Board Certified – Civil Trial Law & Civil App Law

Texas Board of Legal Specialization

UT CLE FIRST FRIDAY ETHICS PROGRAM -  
January 6, 2023

**LAWPAY**<sup>®</sup>

AN AFFINIPAY SOLUTION



1



## 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

2

## 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!



**LAWPAY**  
AN AFFINIPAY SOLUTION

3

“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.**

**LAWPAY**  
AN AFFINIPAY SOLUTION

4

## 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*



**LAWPAY**  
AN AFFINIPAY SOLUTION

5

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.

**LAWPAY**  
AN AFFINIPAY SOLUTION

6

Also available as part of the eCourse

[First Friday Ethics \(December 2023\)](#)

First appeared as part of the conference materials for the  
2023 First Friday Ethics (December 2023) session

"Sign Right Here (Replay)"