ETHICS and THE DUTY OF LOYALTY



Can Clients and Firm Modify that Relationship And Still be Ethical?

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2022 Renewable Energy Law Institute
UT LAW CLE Course

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What We'll Cover:

TOP 5

1. What are the basics of Client Loyalty?
2. Thesis: Should Lawyers be permitted to require Advance Consent for Conflicts of Interest?
3. Current Constrictions of Rules: Model Rule 1.7, 1.10; Tx Rules 1.06, 1.09
4. Proposed Change to Texas Rules – New Rules 1.09 and1.10
5. Are Transactional Firms different from Litigators?
6. Pros and Cons of allowing this Change

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Part 1:
The Basics

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Confidential Information

Lawyers are bound to keep information received from a client "confidential."

What does that include?



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Texas Rule 1.05(a) – Confidentiality of Information

"Confidential Information" includes both *privileged information* as well as *unprivileged client information*.

"Privileged information" means information protected by the attorney/client privilege per Federal or Texas civil or criminal law.

"Unprivileged client information" means "all [other] information relating to a client or furnished by the client. . . acquired by the lawyer during the course of or by reason of the representation of the client."

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Texas Rule 1.05 (b) (paraphrased)

Except as otherwise permitted, a lawyer shall not knowingly:

(1) *Reveal confidential information of a client or a former client* to someone the client has forbidden, or to anyone other than the client, the client's representatives, or others at the lawyer's firm.

(2) *Use confidential information of a client* to the disadvantage of the client without client consent.

(3) *Use confidential information of a former client* to the disadvantage of the former client without the former client's consent, or if the confidential information has become generally known.

(4) *Use privileged information* of a client for the advantage of the lawyer or a third person without client consent.

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First appeared as part of the conference materials for the
17th Annual Renewable Energy Law Institute session
"Ethics and the Duty of Loyalty"