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**MODEL RULES OF PROFESSIONAL CONDUCT  
SELECTED RULES RELATED TO ETHICS IN  
NEGOTIATIONS**

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The basis for legal ethics in the United States is the Model Rules of Professional Conduct, created by the American Bar Association (the “Model Rules”). At present, 49 states and the District of Columbia have adopted the Model Rules, either in whole or with modifications. California is the only state that has not adopted the Model Rules. This paper presents a selection of excerpts from the Model Rules and the accompanying commentary that are most applicable to lawyers engaged in business negotiations. Distinctions between the Model Rules and the rules as adopted by the State Bar of Texas (the “Texas Rules”) and a selection of reference materials are also provided.

## **I. A LAWYER’S OBLIGATION TO CLIENTS**

The starting point for a lawyer’s ethical obligations in business negotiations is that a lawyer must zealously advocate for his or her clients. The rules recognize, however, that there can be a conflict between a lawyer’s obligation to clients, a lawyer’s obligation to others, and the lawyer’s own interest. The Model Rules counsel that the Rules provide a framework for resolving such tensions. The Texas Rules takes a more affirmative approach, and state that the Texas Rules prescribe a minimum level of conduct for lawyers.

### **A. Preamble: A Lawyer’s Responsibilities (Model Rules)**

[2] ... As advocate, a lawyer zealously asserts the client’s position under the rules of the adversary system. As negotiator, *a lawyer seeks a result advantageous to the client but consistent with requirements of honest dealings with others...*

....

[9] In the nature of law practice, however, conflicting responsibilities are encountered. *Virtually all difficult ethical problems arise from conflict between a lawyer’s responsibilities to clients, to the legal system and to the lawyer’s own interest in remaining an ethical*

*person while earning a satisfactory living.* The Rules of Professional Conduct often prescribe terms for resolving such conflicts. Within the framework of these Rules, however, many difficult issues of professional discretion can arise. Such issues must be resolved through the exercise of sensitive professional and moral judgment guided by the basic principles underlying the Rules. These principles include the lawyer's obligation zealously to protect and pursue a client's legitimate interests, within the bounds of the law, while maintaining a professional, courteous and civil attitude toward all persons involved in the legal system.

**B. Preamble: A Lawyer's Responsibilities (Texas Rules)**

Paragraph [2] of the Texas Rules is identical to Paragraph 2 of the Model Rules.

Paragraph [9] of the Model Rules is renumbered as paragraph 7 of the Texas Rules and revised as follows.

7. In the nature of law practice, conflicting responsibilities are encountered. Virtually all difficult ethical problems arise from apparent conflict between a lawyer's responsibilities to clients, to the legal system and to the lawyer's own interests ~~in remaining an ethical person while earning a satisfactory living.~~ The Texas Disciplinary Rules of Professional Conduct prescribe terms for resolving such tensions, conflicts, ~~They do so by stating minimum standards of conduct below which no lawyer can fall without being subject to disciplinary action.~~ Within the framework of these Rules, ~~however,~~ many difficult issues of professional discretion can arise. The Rules and their Comments constitute a body of principles upon which the lawyer can rely for guidance in resolving such issues through the exercise of sensitive professional and moral judgment. In applying these rules, lawyers may find interpretive guidance in the principles developed in the Comments. ~~Such issues must be resolved through the exercise of sensitive professional and moral judgment guided by the basic principles underlying the Rules. These principles include the lawyer's obligation zealously to protect and pursue a client's legitimate~~

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