

Free Range Ethics:

“Home, home, on the range, Where the deer and antelope play, Where seldom is heard a discouraging word, And the skies are not cloudy all day.”

George W. Coleman
Claude E. Ducloux

University of Texas School of Law
2018 RENEWABLE ENERGY LAW
January 29-30, 2018



Dallas 2716783

Presenters and Authors

George W. Coleman
Bell Nunnally & Martin LLP
3232 McKinney Ave., Suite 1400
Dallas, TX 75204
(214) 880-6670
gcoleman@bellnunnally.com

Claude E. Ducloux
Director of Education and Ethics -
Affinipay
3700 Capital of Texas Hwy North
Ste 300
Austin, TX 78746
(512) 716 - 8580
cducloux@affinipay.com

Table of Contents

• Example 1 -- Preparing Legal Documents as a Courtesy	4
• Example 2 – Multiple Clients –One Transaction	9
• Example 3 – Law Firm “officers” and Staff Bonuses	15
• Example 4 – Summer Associates: Are they Lawyers?	20
• Example 5 – Law Firm Web Site – Confidential Information	26
• Example 6 – Sharing Fees with Former Firm	30
• Example 7 – Multistate Transaction	33
• Example 8 – Settling Your Own Malpractice Claim! Really!	38
• Example 9 -- When is a Lawyer not a Lawyer?	44

Preparing Legal Documents as a Courtesy Example 1

- Real Estate Purchase Loan transaction. Lawyer acts for Lender.
- Lender’s lawyer prepares loan documents. Customer (Buyer) pays legal costs.
- Also, while preparing loan documents, Lender’s Lawyer, as a courtesy, prepares deed for Seller without being asked.
- Lender’s Lawyer has no contact with Seller.

Preparing Legal Documents as a Courtesy Example 1(Cont'd)

- Seller does not know and is unaware of Lender's Lawyer.
- **May Lender's Lawyer prepare documents for Seller.**
- See Texas Rule 1.06
- See Texas Ethics Opinion 525 (1998), Opinion 448 (1987), Opinion 408 (1984) and Opinion 228 (1959).

5

Nope: No relationship, No Deed Plus, Potential Conflict of Interest

- Attorney may not prepare deed without relationship. So far, no attorney client relationship has been formed and Seller has not been given opportunity to select counsel. ABA Model Rules of Professional Conduct, Rule 1.16. Texas Disciplinary Rules of Professional Conduct, Rule 1.15 (a).
- Opinion 525 provides in part:
- "If the lender's attorney is representing only the lender, either the lender or the lender's attorney must fully advise the purchaser – borrower that the lender's attorney does not represent the purchaser-borrower and that the purchaser-borrower should obtain advice and representation by another attorney. In the absence of notice that the lender's attorney does not represent the purchaser-borrower, Rule 1.06 is applicable and the full disclosure required by that rule must be made to the purchaser-borrower.

6

Can Lender Suggest the Seller allow their lawyer to prepare the Seller's Deed?

- Neither the lender nor its attorney can suggest that the seller allow the lender's attorney to represent the seller in the preparation of the deed.
- If the seller requests or authorizes the lender's attorney to represent the seller in preparing a deed for execution by the seller, the lender's attorney may prepare the deed but in doing so will be engaged in dual representation of the lender and the seller. Before undertaking the joint representation of the seller and the lender, the lender's attorney must reasonably believe the representation of each client will not be materially affected, and must provide full dual representation disclosure to the seller and lender and obtain the consent of each after full disclosure of the existence, nature, implications and possible adverse consequences of the common representation and the advantages involved, if any.

7

The Solution to resolve conflict: Written Notice

A lender's attorney may not prepare a deed for use in a real estate transaction without having been requested or authorized to do so by the seller unless the attorney provides written notice to the seller that he has prepared the deed at the request of the lender, that he represents the lender and only the lender in the transaction, at that the seller is advised to consult his own legal counsel before signing the deed.

8

Find the full text of this and thousands of other resources from leading experts in dozens of legal practice areas in the [UT Law CLE eLibrary \(utcle.org/elibrary\)](https://utcle.org/elibrary)

Title search: Free Range Ethics: Where Seldom Is Heard a Discouraging Word and the Skies Are Not Cloudy All Day

First appeared as part of the conference materials for the
2018 Renewable Energy Law session

"Free Range Ethics: Where Seldom Is Heard a Discouraging Word and the Skies Are Not Cloudy All Day"