

“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[®]

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

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: [Sign Right Here](#)

Also available as part of the eCourse

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

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

"Sign Right Here"