

IN THE SUPREME COURT OF TEXAS

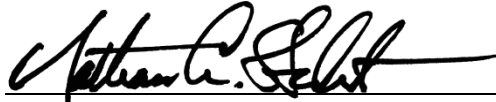
Misc. Docket No. 16-9032

ORDER AMENDING COMMENTS TO THE TEXAS DISCIPLINARY RULES OF PROFESSIONAL CONDUCT AND THE TEXAS RULES OF DISCIPLINARY PROCEDURE

ORDERED that:

1. The comment to Rule 1.06, Texas Disciplinary Rules of Professional Conduct, is amended to add paragraph 19, as published in this order.
2. Paragraph 5 of the comment to Rule 1.09, Texas Disciplinary Rules of Professional Conduct, is amended as published in this order.
3. Rule 13.03, Texas Rules of Disciplinary Procedure, is amended to add the comment published in this order.
4. The Clerk is directed to:
 - a. file a copy of this order with the Secretary of State;
 - b. cause a copy of this order to be mailed to each registered member of the State Bar of Texas by publication in the *Texas Bar Journal*;
 - c. send a copy of this order to each elected member of the Legislature; and
 - d. submit a copy of the order for publication in the *Texas Register*.

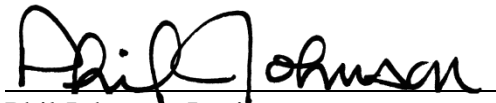
Dated: March 22, 2016.



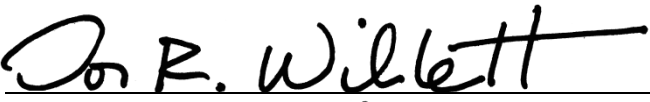
Nathan L. Hecht, Chief Justice



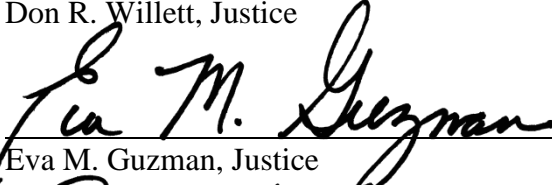
Paul W. Green, Justice



Phil Johnson, Justice



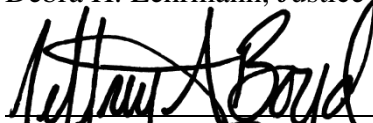
Don R. Willett, Justice



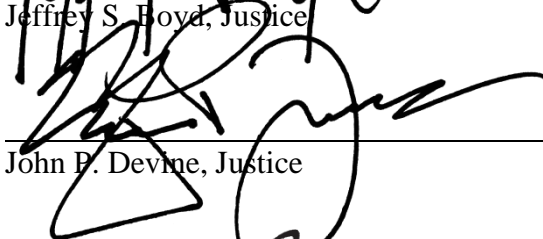
Eva M. Guzman, Justice



Debra H. Lehrmann, Justice



Jeffrey S. Boyd, Justice



John P. Devine, Justice



Jeffrey V. Brown, Justice

The comment to Rule 1.06, Texas Disciplinary Rules of Professional Conduct, is amended as follows:

Rule 1.06. Conflict of Interest: General Rule

* * *

Comment:

* * *

Imputed Conflicts, Nonlawyer Employees, and Lawyers Formerly Employed in a Nonlawyer Role

19. A law firm is not prohibited from representing a client under paragraph (f) merely because a nonlawyer employee of the firm, such as a paralegal or legal secretary, has a conflict of interest arising from prior employment or some other source. Nor is a firm prohibited from representing a client merely because a lawyer of the firm has a conflict of interest arising from events that occurred before the person became a lawyer, such as work that the person did as a law clerk or intern. But the firm must ordinarily screen the person with the conflict from any personal participation in the matter to prevent the person's communicating to others in the firm confidential information that the person and the firm have a legal duty to protect. See Rule 5.03; see also MODEL RULES PROF'L CONDUCT r. 1.10 cmt. 4 (AM. BAR ASS'N 1983); RESTATEMENT (THIRD) OF THE LAW GOVERNING LAWYERS § 123 cmt. f (AM. LAW INST. 2000).

The comment to Rule 1.09, Texas Disciplinary Rules of Professional Conduct, is amended as follows:

Rule 1.09. Conflict of Interest: Former Client

* * *

Comment:

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5. Paragraph (b) extends paragraph (a)'s limitations on an individual lawyer's freedom to undertake a representation against that lawyer's former client to all other lawyers who are or become members of or associated with the firm in which that lawyer is practicing. Thus, for example, if a client severs the attorney-client relationship with a lawyer who remains in a firm, the entitlement of that individual lawyer to undertake a representation against that former client is governed by paragraph (a); and all other lawyers who are or become members of or associated with that lawyer's firm are treated in the same manner by paragraph (b). Similarly, if a lawyer severs his or her association with a firm and that firm retains as a client a person whom the lawyer personally represented while with the firm, that lawyer's ability thereafter to undertake a representation against that client is governed by paragraph (a); and all other lawyers who are or become members of or associates with that lawyer's new firm are treated in the same manner by paragraph (b). See also paragraph 19 of the comment to Rule 1.06.

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The following comment is added to Rule 13.03, Texas Rules of Disciplinary Procedure:

13.03. Hearing and Order on Application to Assume Jurisdiction

* * *

Comment: Chapter 456, Estates Code, authorizes the personal representative of a deceased attorney to designate an attorney—including him- or herself, if the personal representative is an attorney—to disburse and close the deceased attorney’s trust or escrow accounts for client funds. See TEX. EST. CODE § 456.002. Before appointing an attorney to wind up a deceased attorney’s practice under this rule, the court should determine whether the deceased attorney’s personal representative has designated an attorney under Chapter 456 to close the deceased attorney’s trust and escrow accounts.