

FIDUCIARY DUTIES: ATTORNEY → CLIENT: THE TOP END

1. Attorneys owe their clients a duty of **undivided loyalty**. *Employers Cas. Co. v. Tilley*, 496 S.W.2d 552, 558 (Tex. 1973); *Almanzar v. State*, 682 S.W.2d 393, 94 (Tex. App.—El Paso 1984, *aff'd*.) 702 S.W.2d 653 (Tex. Crim. App. 1986).
2. “The relationship of attorney and client is one of the **highest trust** and confidence and in dealing with a client, an attorney must act with the **utmost fairness and in good faith**.” David Beck, *Legal Malpractice in Texas* (2nd Ed.), 50 BAYLOR L.REV. 550, 607 (1998). (Bold added.)—Lots of good cites can be found in this Article by a former State Bar President.
3. The relationship between attorney and client is one of “*uberrima fides*.” The **integrity** of such relationship should be **carefully observed and scrupulously upheld at all times**. *Smith v. Dean*, 240 S.W.2nd 789, 791 (Tex. Civ. App.—Waco 1951, no writ). The phrase, *uberrimae fidei* is defined: “Of the utmost good faith[.]” David M. Walker, THE OXFORD COMPANION TO LAW, 1245 (1980). Other legal dictionaries are not substantially different. BLACK’S LAW DICTIONARY (1968), for example, defines *uberrima fides* this way: “The most abundant good faith; absolute and perfect or openness and honesty; the absence of any concealment or deception, however slight. A phrase used to express the perfect good faith, concealing nothing....” Id. at p. 1690 Fourth Edition, for example. (According to this entry in BLACK’S, years ago insureds owed this duty to insurers. Times have changed. So has BLACK’S. The current Eighth Edition has almost nothing interesting to say on the general subject.)
4. The fiduciary obligation running from attorneys to clients is at the **heart** of the attorney-client relationship. Attorney-to-client “fiduciary obligations are at the heart of the attorney-client relationship, and enables the client to place unhesitating trust in the attorney’s ability to represent them effectively.” *Beck, supra note #2* at 608-609.
5. Attorneys owe their clients the **highest** fiduciary duties. *Bloyet v. General Motors Corp.*, 881 S.W.2d 422, 436 (Tex. App.—Texarkana 1994), *aff'd* 916 S.W.2d. 949 (Tex. 1996); *Judwin Properties, Inc. v. Griggs & Harrison*, 911 S.W.2d 495, 506 (Tex. App.—Houston [1st Dist.] 1995, no writ).
6. The attorney-client relationship is **highly fiduciary** in nature and requires the **utmost good faith**. The relationship running from attorney to client carries the **utmost** (i.e. the most abundant) good faith obligations.
7. The attorney-client relationship running from the attorney to the client is one involving the **highest good faith**. ““The cardinal principle that an attorney

owes his client the **highest of good faith** furnishes the basis for a number of legal doctrines.” (“In 5 Tex. Jur., *Attorney at Law* § 32 (1930) [citations omitted].) (Bold added.)

8. Attorneys must treat their clients in such a way that the clients apparently can have the **highest trust** and confidence in the attorney. *Smith v. Dean*, 240 S.W.2d 789, 791 (Tex. Civ. App.—Waco 1951, no writ).
9. The attorney-to-client relationship must be **carefully** observed and **scrupulously** upheld by the attorney at all times. *Smith*, #8 at 791.
10. Attorneys are obligated to render **full and fair disclosure** of facts to their clients, when those facts are in any way material to the attorney’s representation of the client. *Willis v. Maverick*, 760 S.W.2d 642, 645 (Tex. 1988). See, *Beck*, *supra* # 2 at 610.
11. Attorneys owe their clients **absolute and perfect candor, openness, and honesty** at all times. See, *Employers Cas. Co. v. Tilley*, 496 S.W.2d 552, 558 (Tex. 1973); *Judwin Properties, Inc. v. Griggs & Harrison*, 911 S.W.2d 948, 506 (Tex. App.—Houston [1st Dist.] 1995, no writ). See *In re Legal Econometrics, Inc.*, 191 B.R. 331, 346 (Bankr. N.D. Tex. 1995).
12. The relationship from attorney to client must involve the “absence of any **concealment or deception**, however slight.” *State v. Baker*, 537 S.W.2d 367, 374 (Tex. Civ. App.—Austin 1976, writ ref’d n.r.e.) See, *Legal Econometrics*, *supra* #11 at 346; *Judwin*, *supra* #11 at 506; and *Byrd v. Woodriff*, 891 S.W.2d 689, 700 (Tex. App.—Dallas 1994, writ den’d).
13. Attorneys must preserve the **confidences** of their clients. *NCNB Texas National Bank v. Coker*, 765 S.W.2d 398, 399 (Tex. 1989).
14. Clients must **rationally** feel free to **rely** upon the advice of their attorneys.
15. Attorneys must treat their clients in such a way that it is **rational** for the clients unhesitatingly to fully **trust** the attorney.
16. Attorneys must **preserve** and **maintain confidential information** about their clients, however derived. This is a fiduciary duty as well as a duty in the rules of professional conduct.
17. Attorneys must **disclose** as soon as possible **to clients** any information that might prevent attorneys from fulfilling fiduciary duties to given clients.
18. If a conflict develops between the interest of one client and another, so far as the attorney is concerned, the attorney owes a duty to each of the clients immediately to disclose and identify the conflict. *Employers Cas. Co. v. Tilley*, 496 S.W.2d 552, 558 (Tex. 1973).

19. Clients must be able to rationally rely upon their attorneys to act in their – that is the client’s – **best interest** within the scope of the representation (Clients must also be able to trust their attorneys not to act against their interests in other areas, at least without antecedent discussion, advice, action, and so forth.
20. As fiduciaries of their clients, attorneys must place the interests of the clients **ahead** of their own. *Rogasga, Inc. v. Bank One*, 932 S.W.2d 655, 663 (Tex. App.—Dallas, 1996, *no writ*). When there is a fiduciary duty, running from one party to another, the second party is justified in relying upon the first party to act in its best interest. The “its” here refers to the second party.
21. “[A]ll that is required for fiduciary duties to exist[, running from the attorney to the client,] is that the parties, explicitly or by their conduct, manifest an intention to create an attorney-client relationship.” [*supra* #2 at 609.] See, *Vinson & Elkins v. Moran*, 946 S.W.2d 381, 408 (Tex. App.—Houston [14th Dist.] 1997, *writ dismiss’d by agr.*).
22. Under many circumstances, an attorney has fiduciary duties to former clients. These certainly include the **duty of confidentiality**. Under many circumstances, it will also include the **duty of loyalty**.
23. If an attorney **over-charges** a client, the attorney breaches his/her fiduciary duties.
24. If an attorney knowingly or even negligently implies to a client that he is entitled to what is, in fact, over-payment, the attorney breaches a fiduciary duty.
25. Because the relationship between the attorney and the client is fiduciary in nature, there is a **presumption of unfairness** or invalidity attached to attorney-client contracts formed during the relationship.