

Have I Got a DEAL FOR YOU

ATTORNEY SHAWN'S LONGTIME CLIENT, CARLA, IS A SUCCESSFUL ENTREPRENEUR who has created several thriving businesses. Shawn handles the business creation and corporate matters for each of Carla's businesses. Carla is about to start a new business and she thinks it would be good to include an attorney as a business partner. She offers Shawn a 10% interest in the new business entity.

Shawn has long been intrigued by his entrepreneurial clients who create and grow businesses. He wants to participate in building a new business from scratch so he can gain experience to someday launch his own businesses.

Shawn assumes that lawyers are permitted to enter a business arrangement with clients as long as they do not violate any ethical obligations. He meets with Carla in person and tells her that he is inclined to accept her offer. But he tells Carla that she should consult with another lawyer to review the terms of their agreement and provide independent advice on whether the transaction is fair to her. Carla says that won't be necessary, given their long relationship and the high level of confidence and trust that she has in Shawn. They shake hands to signify their agreement and agree to move forward as partners.

Which of the following actions constitute a violation by Shawn of the Texas Disciplinary Rules of Professional Conduct?

- A. Failure to put the terms of the business relationship in writing.
- B. Failure to advise Carla in writing to seek the advice of an independent lawyer.
- C. Failure to get Carla's "informed consent" to the terms of the transaction in writing.
- D. A and B
- E. A and C
- F. B and C
- G. A, B, and C
- H. None of the above.



ABOUT THE CENTER

The Texas Center for Legal Ethics was created by three former chief justices of the Supreme Court of Texas to educate lawyers about ethics and professionalism. Lawyers can access the Texas Disciplinary Rules of Professional Conduct, the Texas Lawyer's Creed, and a variety of other online ethics resources by computer or smart device at legalethicstexas.com.

DISCLAIMER

The information contained in Ethics Question of the Month is intended to illustrate an ethics issue of general interest in the Texas legal community; it is not intended to provide ethics advice that applies regardless of particular facts. For specific legal ethics advice, readers are urged to consult the Texas Disciplinary Rules of Professional Conduct (including the official comments) and other authorities and/or a qualified legal ethics adviser.



ANSWER: In 2024, Rule 1.08(a) of the Texas Disciplinary Rules of Professional Conduct was amended to clarify the precise steps an attorney should take when entering into a business relationship with a client. The rule requires that: (1) all terms of any business transaction with a client must be fair to the client and "disclosed and transmitted" by the attorney to the client in writing in a manner that can be "reasonably understood" by the client; (2) the client must be either represented by an independent lawyer or advised in writing to seek the advice of an independent lawyer; and (3) the client must provide "informed consent in writing" to the transaction's terms, including whether the lawyer is also representing the client in the transaction. Significantly, under the amended rule, each of these three requirements must be *in writing*.

Here, Shawn did not comply with any of the three requirements to reduce their understandings and agreements to writing. A handshake is not sufficient to meet the requirements of Rule 1.08(a)(1). Moreover, he did not advise Carla in writing to seek the advice of an independent lawyer, nor did he obtain Carla's informed consent in writing. The correct response is G. For further analysis, go to legalethicstexas.com/ethics-question-of-the-month. **TBJ**