



## **Non-Disparagement and Non-Disclosure Clauses in Settlement Agreements**

A recent ethics opinion addresses the availability of non-disparagement and non-disclosure clauses in settlement agreements that are intended to bind the lawyers of the parties, and not just the parties themselves. See, [Texas Ethics Opinion 708](#). The Texas Ethics Committee answered two questions:

1. May a Texas lawyer agree to be bound by a non-disparagement clause in a client settlement agreement?
2. May a Texas lawyer agree to be bound by a non-disclosure clause in a client settlement agreement, whereby the lawyer agrees not to reveal confidential information related to the representation for marketing purposes?

While this is a Texas ethics opinion, note that the Rules of Professional Conduct for all states are adopted from the ABA Model Rules, and all contain nearly identical language. Ethics opinions from other states are often cited for their reasoning and analysis. You should check your own jurisdiction's rules to verify language.

The Texas Committee concluded that:

A Texas lawyer may not participate in offering or making a client settlement agreement whose terms would impose greater restrictions on the lawyer's right to practice law than those imposed by the law and Rules. For this reason, a lawyer may not participate in offering or making a client settlement agreement that commits a settling party's lawyer not to disparage the opposing party within the context of the lawyer's practice.

A Texas lawyer may participate in offering or making a client settlement agreement that commits a settling party's lawyer not to reveal confidential information related to the matter for marketing purposes, provided the restriction applies only to confidential information that, under the Rules, a lawyer may not reveal without client consent.

This is substantially similar to the reasoning and conclusions of [Indiana Ethics Opinion 2014-1](#), although other states take slightly different approaches. See, e.g., State Bar of Wisconsin, Inside Track, Vol. 7, No. 2, January 2015, [Ethical Dilemmas: Does a Non-Disparagement Clause Violate the Rules of Professional Conduct](#); [Maryland Ethics Docket No. 2021-03](#); [Connecticut Informal Opinion 2013-10](#); [Tennessee Formal Ethics Opinion 2025-F-171](#); [Ohio Formal Opinion 2019-04](#).

The lesson here is to check your jurisdiction's requirements before seeking or agreeing to a limitation on counsel's post-settlement use of information. If you have questions, get in touch with the senior risk management counsel at Attorneys Risk Management at [Attorneys Risk Management](#), and click on the "Request a Risk Management Consultation" button.



**Confidential advice from experienced risk management counsel.**  
Visit [www.attorneyriskmanagement.com](http://www.attorneyriskmanagement.com) or call: 844-782-RISK (7475).

*Please Note: Unless there is a current countersigned engagement letter on file with Barron & Newburger, P.C., BNPC is not your lawyer.*