If a client demands that the attorney verify a pleading pursuant to Rule 93, T.R.C.P., and the attorney knows statements in the pleading to be false, must the attorney honor the client's demand?

No. While attorneys owe clients a duty to zealously represent them, such representation must be within the bounds of the law. To knowingly verify a false pleading would, at a minimum, subject an attorney to professional discipline for violation of the following Disciplinary Rules: 7-102(A)(5), knowingly making a false statement of fact; 7-102(A)(7), assisting a client in illegal or fraudulent conduct; 1-102(A)(4), engaging in conduct involving fraud, dishonesty, deceit, or misrepresentation; 1-102(A)(6), engaging in conduct reflecting adversely on the attorney's fitness to practice law. While DR 7-102(A)(2) forbids a lawyer from knowingly advancing a claim or defense that is unwarranted under existing law and DR 7-102(A)(5) forbids knowingly making a false statement of law or fact, such prohibitions even more strongly apply to claims made in verified pleadings.

The General Commentary to Rule 93 quotes from an article and a speech by Robert W. Stayton. Of particular relevance is language from Stayton's article, "The Scope and Function of Pleadings Under the New Federal and Texas Rules: A Comparison," 20 Texas L.Rev. 16, 25 (1941): It is required that, if made, contentions here referred to shall be under oath . . . . . It is the impression that the requirement of sworn, specific pleadings in these exceptional instances and in others of a like nature, has resulted in a wholesome deterrence.

The obvious intent of Rule 93 is to deter certain frivolous or untrue claims by requiring that they be sworn to. It is evident from the cases that the verification is not to be taken lightly and that false verification is a form of perjury. See Davis v. Young California Shoes, Inc., 612 S.W.2d 703 (Tex. Civ.App.--Dallas 1981, no writ). Davis states that a proper Rule 93 verification must be "so direct and unequivocal as to subject the affiant to perjury if untrue." Id. at 704. While this case is concerned with the definiteness of the assertions required to comply with Rule 93, the obvious implication is that a false verification is perjurious.

At least one other state has adopted this viewpoint, and has subjected an attorney to professional discipline for false verification. See Office of Disciplinary Counsel v. Grigsby, 425 A.2d 730 (Pa. 1981). In that case, the attorney was disbarred on the basis of evidence that he filed a false sworn pleading and a false sworn application for a driver's license. "This Court has held that false swearing is an 'egregious species of dishonesty' which goes to the heart of the legal profession . . . . Truth is the corner-stone of the judicial system; a license to practice law requires allegiance and fidelity to truth." Id. at 733. Disbarment was, therefore, considered the appropriate remedy for false swearing.

See also Five Star Energy Corp. v. Sowell, Ogg & Hinton, 640 S.W.2d 722, 725 (Tex.Civ.App.--Houston [14th Dist.] 1982, writ app. pending), which states, "A denial under oath is presumed to be true and if a party swears to incorrect information, he opens himself up to prosecution for perjury."

This Committee has always made it clear and will continue to stress that an attorney has a duty to act in a truthful and honest fashion with respect to all of his professional dealings. In this
instance it suffices to say that perjury can never be condoned and no client has the right or power to make an attorney perjure himself or use the known perjury of another