

Two High Courts Approve Statewide Behavior Code

Anti-Rambo Creed Enforced Through Peer Pressure

BY CLARA TUMA
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A unique behavior code — the first in the nation to be approved by a state's highest courts — has taken an old-fashioned approach to modern-day Texas attorneys who practice "Rambo" litigation.

The code, signed by all members of the Texas Supreme Court and all but one judge on the Court of Criminal Appeals, uses peer pressure instead of sanctions to try to keep lawyers in line.

The seven-page, voluntary code is a retreat from earlier proposals, which called for specific sanctions. But members of the committee that drafted the new code say they hope lawyers use its guidelines to pressure unruly colleagues to curb their behavior.

And if that doesn't work, lawyers can cite the code, formally named The Texas Lawyer's Creed — A Mandate for Professionalism, in asking for sanctions under existing rules, committee members say.

"Ultimately, peer pressure is the only way of achieving the goal," said W. Frank Newton, dean of the Texas Tech University law school and a member of the committee. "If what you're going to do is tell people, 'We will beat you up if you're not nice,' well, of course the very act of beating someone up is not nice. You can't get there going that way.

"It has to work this way, and I think it will," Newton said. "Anybody can break the rules and get ahead for a little while, but ultimately people who cheat will find it very hard to get into the ball game."

The code includes a number of simplistic vows, including one to be punctual, and other, more lofty goals that, while sounding nice — one urges lawyers to provide "adequate and effective" pro bono programs — are lacking any specifics.

More intricate proposals include promises to refuse to trick opposing attorneys when drafting documents and to advise clients that civility and courtesy "are not a sign of weakness."

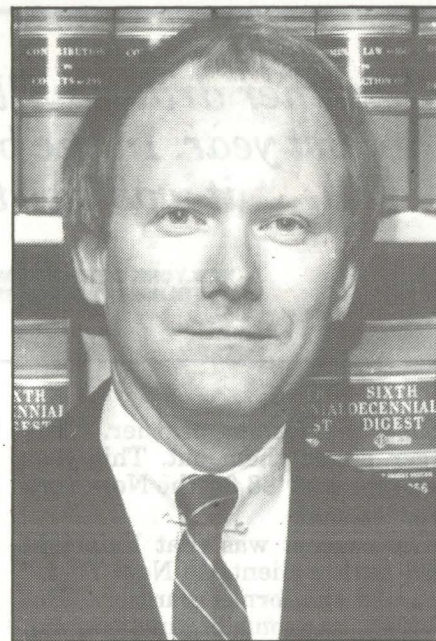
The creed approved by the high court jurists Nov. 7 takes issue with "Rambo" litigators who argue that zealous advocacy requires them to stop at virtually nothing to represent their clients adequately.

"Obviously, the drafters of the code believe that that [attitude] may be too simplistic a view — that it ultimately does a disservice to the entire legal profession and that it's too great an expense if society as a whole suffers," Newton said.

"We have a special obligation to make sure the system works for all citizens and not just and exclusively for that lawyer's individual client of the moment," Newton said.

Justice Eugene Cook, a prominent Houston litigator appointed to the Supreme Court in 1988, spearheaded the move to adopt a behavior code for Texas lawyers after win-at-all-cost litigators began gaining prominence.

The new code is the first statewide, uniform set of standards for attorney behavior in the state. Federal judges in the Northern District of Texas adopted a behavior code with sanc-



DEAN W. FRANK NEWTON: Member of the code-drafting committee says there's an obligation to make sure system works for the public, not just lawyers and their clients.

tions in July 1988, and state district judges in Dallas later adopted the same code. Other state courts, the Texas Trial Lawyers Association and the Texas Association of Defense Counsel have adopted similar codes this year.

Cook originally envisioned a code backed up with tough sanctions, but committee members quickly scrapped that in favor of a voluntary creed.

"We have done a great deal of research and found that courts already have all of the powers they need to enforce these rules," Cook said. "What we are saying is, 'Judges, use your inherent power.'"

Members said they eschewed sanctions because they were afraid such penalties might be counterproductive, and could in fact encourage more of the same behavior the code is designed to curb.

"... The prevailing consensus was that at this point in time, there are enough procedures for sanctions that

courts are reluctant to use now," said committee member William Lewis Sessions, a senior associate with Rosenberg, Kelleher & Wheatley of San Antonio.

"If there is substantial reluctance to follow the creed, I think the courts will consider the option of sanctions later," Sessions said. "My impression about the [Supreme] Court is that the court is quite intent on doing everything in its power to encourage the bar to police itself and promote a code of conduct that is ultra-professional."

Committee co-chairman James H. "Blackie" Holmes, a partner in Dallas' Burford & Ryburn, said he believes the code is necessary because of a recent "meltdown in manners" among some lawyers.

"It's time the meltdown quit," he said.

"[The code] is not used as the formula for the invoking of sanctions, but it is certainly something the courts can look to as a guideline in determining whether a party has [misbehaved]."

Several other committee members and high court jurists said they agree that sanctions would have been out of place in the behavior code.

"I don't think another layer of sanctions is the answer and I do not think this one action is going to result in a revolution," Chief Justice Thomas Phillips said. "But I do think it is going to help. . . . I think this will help if only that lawyers know this code is a standard of behavior that can be considered in malpractice cases. The big concern is, 'If I do not press my adversary to a degree, am I facing a malpractice suit?'"

"We are saying something about that," Phillips said. "We are giving lawyers ammunition they can take back to their clients who ask them to perform acts that border on the uncivilized."

Judge Marvin O. Teague, the only member of the state's two highest courts to refuse to sign the creed, refused to discuss his reasoning.

"I have no comments," he said. "None." ■