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TEXAS LAWYER'S CREED AND THE TEXAS CENTER FOR LEGAL ETHICS CELEBRATE A QUARTER OF A CENTURY.

BY JONATHAN E. SMABY AND BEVERLY GODBEY

"A lawyer is a representative of clients, an officer of the legal system, and a public citizen having special responsibility for the quality of justice. Lawyers, as guardians of the law, play a vital role in the preservation of society. The fulfillment of this role *requires an understanding by lawyers of their relationship with and function in our legal system.*"

—Preamble, Texas Disciplinary Rules of Professional Conduct (emphasis added)

These are the opening words of the Texas Disciplinary Rules of Professional Conduct, the ethics guidelines by which every Texas attorney must abide. While most of us skip over the preamble to locate whatever specific rule we might need to consult that day, those first words actually provide the context necessary for interpreting the 52 distinct and detailed rules that follow.

Although our rules are fairly lengthy, they address only a fraction of the ethical decisions lawyers wrestle with each day. For example, four separate rules apply to conflicts of interest, but even those can't anticipate every conceivable situation that might compromise a lawyer's professional judgment. Prudent lawyers, therefore, evaluate their conduct not only in accordance with the rules but also in light of the higher principles that these rules are meant to uphold.

THE TEXAS LAWYER'S CREED

A MANDATE FOR PROFESSIONALISM

I am a lawyer. I am entrusted by the People of Texas to preserve and improve our legal system. I am licensed by the Supreme Court of Texas. I must therefore abide by the Texas Disciplinary Rules of Professional Conduct, but I know that Professionalism requires more than merely avoiding the violation of laws and rules. I am committed to this Creed for no other reason than it is right.

I. Our Legal System

A lawyer owes to the administration of justice personal dignity, integrity, and independence. A lawyer should always adhere to the highest principles of professionalism.

1. I am passionately proud of my profession. Therefore, "My word is my bond."
2. I am responsible to assure that all persons have access to competent representation regardless of wealth or position in life.
3. I commit myself to an adequate and effective pro bono program.
4. I am obligated to educate my clients, the public, and other lawyers regarding the spirit and letter of this Creed.
5. I will always be conscious of my duty to the judicial system.

II. Lawyer to Client

A lawyer owes to a client allegiance, learning, skill, and industry. A lawyer shall employ all appropriate legal means to protect and advance the client's legitimate rights, claims, and objectives. A lawyer shall not be deterred by any real or imagined fear of judicial disfavor or public unpopularity, nor be influenced by mere self-interest.

1. I will advise my client of the contents of this creed when undertaking representation.
2. I will endeavor to achieve my client's lawful objectives in legal transactions and in litigation as quickly and economically as possible.

Twenty-five years ago, this connection between the rules and their ultimate purpose came under assault during what is now known as the era of “Rambo” lawyering. Litigation tactics in some parts of the state became, in the eyes of leading lawyers and judges, unnecessarily contentious. While our ethical rules do not strictly prohibit such aggressive behavior, many thought that our traditional standards of professionalism should.

The federal district judges of the Northern District of Texas sounded one of the first alarms. In the now-famous *Dondi* decision,¹ they succinctly identified the problem:

With alarming frequency, we find that valuable judicial and attorney time is consumed in resolving unnecessary contention and sharp practices between lawyers. Judges and magistrates of this court are required to devote substantial attention to refereeing abusive litigation tactics that range from benign incivility to outright obstruction. Our system of justice can ill-afford to devote scarce resources to supervising matters that do not advance the resolution of the merits of a case; nor can justice long remain available to deserving litigants if the costs of litigation are fueled unnecessarily to the point of being prohibitive.

As judges and former practitioners from varied backgrounds and levels of experience, we judicially know that litigation is conducted today in a manner far different from years past. Whether the increased size of the bar has decreased collegiality, or the legal profession has become only a business, or experienced lawyers have ceased to teach new lawyers the standards to be observed, or because of other factors not readily categorized, we observe patterns of behavior that forebode ill for our system of justice.

After *Dondi*, lawyers in Texas and across the country began to refocus their attention on the proper balance between advocacy and civility. Explosive growth in the number of Texas attorneys had, in some places, eroded the traditional, informal methods of teaching young lawyers how to reconcile their duties to clients with their obligations to the system of justice. In times past, this mentoring may have taken place in the courthouse hallway or at the monthly bar luncheons; by 1989, more was required to address the problem.

That November, the Texas Supreme Court and the Texas Court of Criminal Appeals issued the Texas Lawyer’s Creed: a Mandate for Professionalism. While the creed has a number of specific admonitions regarding abusive litigation tactics, it also echoes the Texas Disciplinary Rules of Professional Conduct’s broader message that ethical lawyers must do more than just follow the rules:

3. I will be loyal and committed to my client’s lawful objectives, but I will not permit that loyalty and commitment to interfere with my duty to provide objective and independent advice.
4. I will advise my client that civility and courtesy are expected and are not a sign of weakness.
5. I will advise my client of proper and expected behavior.
6. I will treat adverse parties and witnesses with fairness and due consideration. A client has no right to demand that I abuse anyone or indulge in any offensive conduct.
7. I will advise my client that we will not pursue conduct which is intended primarily to harass or drain the financial resources of the opposing party.
8. I will advise my client that we will not pursue tactics which are intended primarily for delay.
9. I will advise my client that we will not pursue any course of action which is without merit.
10. I will advise my client that I reserve the right to determine whether to grant accommodations to opposing counsel in all matters that do not adversely affect my client’s lawful objectives. A client has no right to instruct me to refuse reasonable requests made by other counsel.
11. I will advise my client regarding the availability of mediation, arbitration, and other alternative methods of resolving and settling disputes.

III. Lawyer to Lawyer

A lawyer owes to opposing counsel, in the conduct of legal transactions and the pursuit of litigation, courtesy, candor, cooperation, and scrupulous observance of all agreements and mutual understandings. Ill feelings between clients shall not influence a lawyer’s conduct, attitude, or demeanor toward opposing counsel. A lawyer shall not engage in unprofessional conduct in retaliation against other unprofessional conduct.

1. I will be courteous, civil, and prompt in oral and written communications.
2. I will not quarrel over matters of form or style, but I will concentrate on matters of substance.
3. I will identify for other counsel or parties all changes I have made in documents submitted for review.
4. I will attempt to prepare documents which correctly reflect the agreement of the parties. I will not include provisions which have not been agreed upon or omit provisions which

The conduct of a lawyer should be characterized at all times by honesty, candor, and fairness. In fulfilling his or her primary duty to a client, a lawyer must be *ever mindful of the profession's broader duty to the legal system* (emphasis added).

The creed is divided into four sections outlining a lawyer's duties to the legal system, clients, other lawyers, and judges. And while it is "primarily aspirational," the creed can be re-enforced through peer pressure and public opinion and, if necessary, by the courts through their inherent powers.

At the time, no one knew what level of impact the creed would have, but it proved to be a seminal event in a revival of professionalism. A large number of state and local bar associations across the country have adopted professional codes and mandates. Mandatory ethics CLE is now commonplace. Numerous Texas cases cite the creed, and both judges and lawyers report that they use it to remind recalcitrant lawyers—and, sometimes, unruly clients—that professional behavior is expected.

Also in November 1989, three retired chief justices of the Texas Supreme Court—Robert Calvert, Jack Pope, and Joe Greenhill—created a permanent organization devoted solely to these issues: the Texas Center for Legal Ethics and Professionalism. At the time, visionary San Antonio lawyer Frank Baker described the center as "a Texas-wide project designed to embody ethics and professionalism ... for the good of the public, the profession, and courts."

Now known as the Texas Center for Legal Ethics, the center was one of the first organizations of its kind. Over the past quarter of a century, it has worked to make the ideals embodied in the creed a reality. The center collaborates with the judiciary, the State Bar of Texas, local bars, law schools, and leading attorneys to provide guidance and encouragement to those who wish to practice law ethically and professionally. Here are some of the ways the center accomplishes its goals:

- *Speakers.* The center serves as a clearinghouse for ethics speakers for bar associations and other organizations throughout the state. Members, the board, and staff work to identify and recruit speakers on a variety of topics.
- *"Justice James A. Baker Guide to the Basics of Law Practice" course.* The Texas Supreme Court requires every new lawyer in the state to take the center's four-hour course focusing on ethics, professional expectations, and the Texas Lawyer's Creed. Since 1996, tens of thousands of Texas lawyers have taken this course, named in honor of a man who epitomized ethics and professionalism, the late Supreme Court Justice James A. Baker.
- *Chief Justice Jack Pope Professionalism Award.* Named

are necessary to reflect the agreement of the parties.

5. I will notify opposing counsel, and, if appropriate, the Court or other persons, as soon as practicable, when hearings, depositions, meetings, conferences, or closings are cancelled.
6. I will agree to reasonable requests for extensions of time and for waiver of procedural formalities, provided legitimate objectives of my client will not be adversely affected.
7. I will not serve motions or pleadings in any manner that unfairly limits another party's opportunity to respond.
8. I will attempt to resolve by agreement my objections to matters contained in pleadings and discovery requests and responses.
9. I can disagree without being disagreeable. I recognize that effective representation does not require antagonistic or obnoxious behavior. I will neither encourage nor knowingly permit my client or anyone under my control to do anything which would be unethical or improper if done by me.
10. I will not, without good cause, attribute bad motives or unethical conduct to opposing counsel nor bring the profession into disrepute by unfounded accusations of impropriety. I will avoid disparaging personal remarks or acrimony towards opposing counsel, parties, and witnesses. I will not be influenced by any ill feeling between clients. I will abstain from any allusion to personal peculiarities or idiosyncrasies of opposing counsel.
11. I will not take advantage, by causing any default or dismissal to be rendered, when I know the identity of an opposing counsel, without first inquiring about that counsel's intention to proceed.
12. I will promptly submit orders to the Court. I will deliver copies to opposing counsel before or contemporaneously with submission to the Court. I will promptly approve the form of orders which accurately reflect the substance of the rulings of the Court.
13. I will not attempt to gain an unfair advantage by sending the Court or its staff correspondence or copies of correspondence.
14. I will not arbitrarily schedule a deposition, Court appearance, or hearing until a good faith effort has been made to schedule it by agreement.
15. I will readily stipulate to undisputed facts in order to avoid needless costs or inconvenience for any party.
16. I will refrain from excessive and abusive discovery.

after the legendary jurist Jack Pope, this award is presented annually to an appellate lawyer or appellate judge who exemplifies the principles of the Texas Lawyer's Creed.

- *Ethics To Go*. This program provides low-cost, high-quality recorded CLE programs to smaller bar associations throughout the state.
- *Online resources*. The center's website, found at legalethictexas.com, provides searchable versions of the Texas Disciplinary Rules of Professional Conduct, every Texas Supreme Court ethics opinion, the Texas Lawyer's Creed, the Texas Rules of Disciplinary Procedure, the Texas Code of Judicial Conduct, and online ethics CLE programs for a nominal cost (some free for members).
- *The Texas EthicsExchange*. Launched this year, the exchange is available to members and includes a wiki-like searchable database of useful ethics topics. Users can communicate directly with the editor by merely clicking on a link to suggest additions, modifications, or corrections.

For 25 years, support of both the Texas Lawyer's Creed and the Texas Center for Legal Ethics by countless Texas lawyers and judges has served our profession well. In fact, the creed is such an integral part of our profession that the Texas Supreme Court and the Texas Court of Criminal Appeals, working with the State Bar and then-President Buck Files, reaffirmed it in April 2013. The words of the courts' 1989 order still ring true today:

We must always be mindful that the practice of law is a profession. As members of a learned art we pursue a common calling in the spirit of public service. We have a proud tradition. Throughout the history of our nation, the members of our citizenry have looked to the ranks of our profession for leadership and guidance. Let us now as a profession each rededicate ourselves to practice law so we can restore public confidence in our profession, faithfully serve our clients, and fulfill our responsibility to the legal system.

Is the creed still necessary? Absolutely. Our ethics rules tell us only what we can't do. The creed tells us what we should do. **TBJ**

NOTE

1. *Dondi Properties Corp. v. Commerce Savs. & Loan Ass'n*, 121 F.R.D.284 (N.D. Tex. 1988).

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17. I will comply with all reasonable discovery requests. I will not resist discovery requests which are not objectionable. I will not make objections nor give instructions to a witness for the purpose of delaying or obstructing the discovery process. I will encourage witnesses to respond to all deposition questions which are reasonably understandable. I will neither encourage nor permit my witness to quibble about words where their meaning is reasonably clear.
18. I will not seek Court intervention to obtain discovery which is clearly improper and not discoverable.
19. I will not seek sanctions or disqualification unless it is necessary for protection of my client's lawful objectives or is fully justified by the circumstances.

IV. Lawyer and Judge

Lawyers and judges owe each other respect, diligence, candor, punctuality, and protection against unjust and improper criticism and attack. Lawyers and judges are equally responsible to protect the dignity and independence of the Court and the profession.

1. I will always recognize that the position of judge is the symbol of both the judicial system and administration of justice. I will refrain from conduct that degrades this symbol.
2. I will conduct myself in Court in a professional manner and demonstrate my respect for the Court and the law.
3. I will treat counsel, opposing parties, the Court, and members of the Court staff with courtesy and civility.
4. I will be punctual.
5. I will not engage in any conduct which offends the dignity and decorum of proceedings.
6. I will not knowingly misrepresent, mischaracterize, misquote, or miscite facts or authorities to gain an advantage.
7. I will respect the rulings of the Court.
8. I will give the issues in controversy deliberate, impartial, and studied analysis and consideration.
9. I will be considerate of the time constraints and pressures imposed upon the Court, Court staff, and counsel in efforts to administer justice and resolve disputes.