THERE ARE NO TRIBES IN HEAVEN: A RENEWED SHARED COMMITMENT TO PROFESSIONALISM

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Litigation Section
Webinar
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BIOGRAPHY

Cade Browning's practice is devoted to litigation with offices in Tuscola and Abilene. He is a Fellow in the American College of Trial Lawyers, is board certified by the Texas Board of Legal Specialization in personal injury trial law, and is licensed in both Texas and Oklahoma.

Cade continues his family's cutting horse tradition at his ranch in Coronado's Camp (near Buffalo Gap) where he lives with his wife, Katie, and their two boys, Barrett and Bede.

Cade graduated from Texas A&M University and Baylor University School of Law, where he was twice elected President of the Student Bar Association and received the 'High A' in Baylor's esteemed Practice Court course from Professor Muldrow.

Professionally, Cade is currently the Vice President of TEX-ABOTA and was previously Chair of the 9,000-member Litigation Section of the State Bar of Texas. He also currently represents his twenty-eight-county area on the State Bar of Texas Board of Directors.

Cade has served as president of the Abilene Bar Association, president of the Abilene Young Lawyers Association, and was named Abilene's Outstanding Young Lawyer.

He was also Past President of the West Texas Chapter of ABOTA and he was also elected to serve on the Texas Young Lawyers Association's Board of Directors for four years representing his thirty-four-county area in West Texas. Cade has served on multiple State Bar Committees, including the Grievance Committee where he was Panel Chair, and the Local Bar Services Committee. He has been named a Texas Super Lawyer eleven times and is a Sustaining Life Fellow of the Texas Bar Foundation and the ABOTA Foundation

Locally, Cade has been very involved in Abilene and West Texas. Cade currently serves on the board of trustees and executive committees for the Grace Museum, Taylor County Expo Center, and Western Heritage Classic. Cade was previously on the board of directors for the Abilene Preservation League, Abilene Community Foundation- Future Fund, St. John's Episcopal School, Big Country Health Education Center, Texas Frontier Heritage and Cultural Center Advisory Board, and Abilene A&M Club. Cade was honored to serve as the president of the board for the Abilene Preservation League, the chairperson of the board for the Abilene Community Foundation – Future Fund, and the Chair for the Board of Trustees for the Grace Museum.

In 2014, Cade was honored to be asked to run for Justice on the Eleventh Court of Appeals in Eastland, a twenty-eighty county district, stretching from Stephenville to New Mexico. Although he won Taylor, Jones, Fisher, Shackelford, Stonewall, and Ector Counties, the bid was unsuccessful, allowing him to happily return to private practice.

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CADE W. BROWNING

A YEAR. A YEAR HAS PASSED SINCE I BEGAN MY TERM AS CHAIR OF THIS SECTION. My dad was right - time flies faster as you age. I wish he was still alive to read these musings. I wish he was still alive…period. But, I think he would be upset at some of the things in this world. He saw things as black-or-white; there wasn't much gray in his worldview. There was a lot of love and forgiveness for those in the gray, but there was not much room for gray in his own moral compass. Truth mattered to him and lying by omission was the same as lying, a lesson that I had to learn more than once, I am sad to say.

I think about him and those principles sometimes now in our cases and how we litigate. I want to be involved in the search for truth. I know we owe a duty to our clients, but surely we can do that while helping truth find its way to justice. Are we searching for truth or are we trying to hide it? Truth should still matter for lawyers.

For prosecutors, the Texas Code of Criminal Procedure states that "[i]t shall be the primary duty of all prosecuting attorneys…not to convict, but to see that justice is done." TEX. C. CRIM. PRO. art. 2.01. I love that.

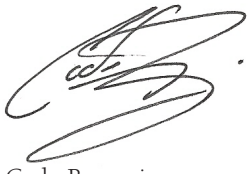
When the Texas Lawyer's Creed was adopted, Justice Eugene Cook wrote a December 22, 1989 letter to all Texas lawyers stating:

> There is a renewed call for professionalism echoing throughout our great state. Our conduct should be characterized at all times by honesty, candor and fairness.
>
> Those who believe that waging Rambo-style litigation is the way to practice law do a tremendous disservice to our entire profession. Lawyers with this type of attitude instead of being part of the solution have become part of the problem. Lawyers want to restore civility to the courtroom, to the discovery process and to the entire practice of law.

Justice Cook entitled his letter "A Shared Commitment to Professionalism." I love that, too. I feel that echoing. Don't you? I encourage you to reread the Texas Lawyer's Creed. It reminds us that we owe a duty to the administration of justice to have personal dignity and integrity. Our "word is our bond." We will be courteous. We will comply with all reasonable discovery requests. We will not arbitrarily schedule depositions or hearings. We will readily stipulate to undisputed facts.

The Texas Lawyer's Creed is a great document filled with great thoughts. Thoughts put into words put onto paper. Isn't that the nucleus to everything that holds our society together? Thoughts into words onto paper and it is up to us to put it into action. The Epic of Gilgamesh. The Torah. The New Testament. The Magna Carta. The Constitution. "Do unto others what you would have them do to you." "We the People of the United States, in Order to form a more perfect Union, establish Justice….do ordain and establish this Constitution." "Love your neighbor as yourself." All thoughts put into words put onto paper, and that paper defines our lives, our faith, our country, our Rule of Law, and our job. Our profession. Our duty.

So, as I saddle up my gelding and ride off from this privilege of being the Chair of this Section, let us remember that we are all in this together and, as my dad would say, I hope you take a deep seat, tight hold, and may the good Lord take a likin' to you.



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WHY DO YOU DRESS ME IN BORROWED ROBES? Much like Macbeth's confusion as to why he is being promoted to Thane of Cawdor, I feel so inadequate and unqualified to take over from Judge Xavier Rodriguez and his predecessors as Chair for this amazing Section. But, nonetheless, this is where I find myself and I couldn't be more honored and humbled. I can only hope this does not end quite as tragically as MacBeth, although Buffalo Gap, Texas does share many similarities with Scotland.

Let me tell you, I love being a trial lawyer. I love this Council and this Section. There is something so rewarding about being surrounded by lawyers who understand that we are indeed a profession, not just a business. The heart and soul of your Council is service. Service to the Bar, service to our members, service to the public and, importantly, service to the Rule of Law.

This edition of the Advocate is timely focused on technology. To help us, as lawyers, as advocates, to use and appreciate technology to ensure our clients' needs are met to the best of our ability. But, you know what? The virtual legal world is no different that than the physical. Courthouses. 254 courthouses in each county throughout our great State. Courthouses. Always in the middle of town. Often in the middle of the County. Do you know why? So people could find that palace of justice. So everyone has access. So you could ride your horse or walk within a day to the Courthouse. So your problems could be solved. So justice could work. If those walls could talk, what have they seen? Cases affecting families, businesses, life, liberty, and money. Lives and jobs on the line. Every courtroom has its stories. If those walls could talk, what have they seen? Can you imagine?

The virtual access to justice does not change the permeability of the proverbial walls of the Courts. It is just a different way. Atticus pours a cup of coffee, leaves the kitchen, and walks into his home office. Through the window he can see the treehouse between the two giant twin chinaberry trees. "Scout, go outside, keep quiet and take Boo and Jem with you. I've got a zoom meeting." The seersucker jacket goes over the well-ironed shirt. The tie is knotted. He sits and presses power. A quick

click to preview that his video cuts off at his stomach, does not show his boxer shorts, and that the cat filter is off. The arguments would be the same. Maybe not as novel and camera-ready scenario and, certainly not as ideal for the public arena, but the purpose is the same. You are still making the argument. You are still seeking justice and doing the best you can for your client. You are making the wheels of justice work. Over the last year and a half, these are our lessons learned and lived. We will survive. Our work will continue and even thrive. Our clients will get results. The Rule of Law will prevail. Well-done advocates. Well-done lawyers. I am proud to be one of you.

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THRESHOLD LITIGATION ISSUES. *THRESHOLD.* NOW THAT IS A WORD. In this edition of *The Advocate,* we explore threshold issues to consider in litigation, but I'll ask us to dig deeper. According to Merriam-Webster, *threshold* has two definitions: (1) the point or level at which something begins or changes and (2) a piece of wood, metal, or stone that forms the bottom of a door that you walk over as you enter a room or building. For us lawyers, though, they can be one and the same. What thresholds do we cross every day and, more importantly, should we?

Think before you act. Isn't that the ultimate threshold? Should we sign up that case? Should we file that suit? Should we mail that letter? Should we send that e-mail? Should we comment on that Facebook post? Every day we make countless decisions on crossing those thresholds. And based on those decisions, things can change. They can change for our clients, our opponents, our families, ourselves, and even the public perception of our legal system and the Rule of Law.

One of the things I love about this Section is its all-inclusiveness. We are plaintiff lawyers, defense lawyers, mediators, and judges. We are republicans, democrats, independents, and somewhere in between. Don't get me wrong - I love tribes. I am a Texan. I am an American. I am a West Texan. I am a Buffalo Gap-ian. I am an Aggie. I am a Baylor lawyer. I am a litigator. I am extremely proud of all those, but we must always remind ourselves there are no tribes in Heaven. In the legal community, we are all in this together. We are all representatives of the Rule of Law. We should strive to lift us all up, not just ourselves or our tribes. Our reputations as lawyers, the reputation of the Rule of Law, and the general population's respect for and adherence to the Rule of Law depends on it. The Rule of Law and the public's perception of and admiration for our legal system is more important than any of us or any of our cases. If we bring others down, we bring down the sacrality of the Law and we bring down ourselves.

So, before we lift our specific issue into our arms and cross that proverbial threshold, let's think about it. We can do our work, promote our business, advocate for our clients, and litigate for a good result. And we can do so in such a way that we bring honor and integrity to our system of justice from whom we all owe so much.

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IN THIS EDITION OF ***THE ADVOCATE,*** WE EXPLORE ***THE CHANGING CIVIL JURY.*** Ugh *change*. I've been practicing for nearly 22 years now and I know many of you have been for much longer, but it seems all I have been guaranteed in those years is nothing but *change*, especially since I am a personal injury attorney. Every two years, we wait on pins and needles wondering what about our livelihood and clients' lives will be changed with each Legislative Session. Every Friday, we watch the email inbox for new cases from Austin which may revamp how we do everything in our office.

But this is the life we chose. It ain't boring and it ain't mundane. It can keep us up in the evening and wake us up at unholy hours of the night, but, still, we get up in the morning. And, when you get up, I hope it is with purpose. I hope it is with a happy heart and a content soul. For me, it is. *Give us this day our daily bread*. This is my daily bread. What is your daily bread? What is your passion? I hope you are able in your life to pursue it.

I'm reminded of a man who was a large influence in my life, Baylor Law Professor David Guinn, who I was devasted to recently hear we lost this Winter, as we've lost too many. I am back in class, trying to hide in my notebook, when I hear a soft "Brother Browning." I can see Prof. point my way with a crooked finger, still bent at the seam from a childhood accident improperly set, and then hear his Cleburne-twanged voice throughout the old building: "One Man, One Vote." He knew his passion. He knew his daily bread. 54 years of teaching at one law school. 7,000 law students. His influence and a life well-lived will extend far beyond his earthly time.

I hope the same will be true of me and you. Love. Integrity. Character. Truth. These are the words I pray and, hopefully, try to ensure will be on my children's lips when they talk about me to their grandchildren. For that is as long as I could possibly hope my memory will last into the future. But this is now and I can strive to do better this morning. And I hope today is better than yesterday, but not as good as tomorrow.

So, as we face change, in whatever shape it next finds, let's do so with an open heart and an eye towards the future and may you know and appreciate your daily bread, whatever it may be. And, as for change, as the old poem decrees: may the menace of the years find you unafraid and may you continue to be the captain of your soul.

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THE TEXAS LAWYER'S CREED

A MANDATE FOR PROFESSIONALISM

Promulgated by
The Supreme Court of Texas and the Court of Criminal Appeals
November 7, 1989

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.

l. 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 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.

l. 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.

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 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.

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.

l. 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.

ORDER OF THE SUPREME COURT OF TEXAS AND THE COURT OF CRIMINAL APPEALS

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.

The Supreme Court of Texas and the Court of Criminal Appeals are committed to eliminating a practice in our State by a minority of lawyers of abusive tactics which have surfaced in many parts of our country. We believe such tactics are a disservice to our citizens, harmful to clients, and demeaning to our profession.

The abusive tactics range from lack of civility to outright hostility and obstructionism. Such behavior does not serve justice but tends to delay and often deny justice. The lawyers who use abusive tactics instead of being part of the solution have become part of the problem.

The desire for respect and confidence by lawyers from the public should provide the members of our profession with the necessary incentive to attain the highest degree of

ethical and professional conduct. These rules are primarily aspirational. Compliance with the rules depends primarily upon understanding and voluntary compliance, secondarily upon re-enforcement by peer pressure and public opinion, and finally when necessary by enforcement by the courts through their inherent powers and rules already in existence.

These standards are not a set of rules that lawyers can use and abuse to incite ancillary litigation or arguments over whether or not they have been observed.

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.

The Supreme Court of Texas and the Court of Criminal Appeals hereby promulgate and adopt
"The Texas Lawyer's Creed - A Mandate for Professionalism" as attached hereto and made a part hereof.

In Chambers, this 7th day of November, 1989.

The Supreme Court of Texas

Thomas. R. Phillips, Chief Justice
Franklin S. Spears
C. L. Ray
Raul A. Gonzales
Oscar H. Mauzy
Eugene A. Cook
Jack Hightower
Nathan L. Hecht
Lloyd A. Doggett
Justices

The Court of Criminal Appeals

Michael J. McCormick, Presiding Judge
W. C. Davis
Sam Houston Clinton
Marvin O. Teague
Chuck Miller
Charles F. (Chuck) Campbell
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M. P. Duncan, III
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Judges

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PRINTED AND DISTRIBUTED
COURTESY OF
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TEXAS CENTER FOR LEGAL ETHICS
AND PROFESSIONALISM

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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.
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.

December 22, 1989

The Lawyers of Texas
---------- A Shared Commitment To Professionalism

Dear Fellow Lawyer:

On November 7, 1989, the Supreme Court of Texas and the Court of Criminal Appeals adopted The Texas Lawyers' Creed -- A Mandate for Professionalism. We thus became the first state in the nation where the highest courts have set forth those standards to which we expect all attorneys to adhere.

There is a renewed call for professionalism echoing throughout our great state. Our conduct should be characterized at all times by honesty, candor and fairness.

Those who believe that waging Rambo-style litigation is the way to practice law do a tremendous disservice to our entire profession. Lawyers with this type of attitude instead of being part of the solution have become part of the problem. Lawyers want to restore civility to the courtroom, to the discovery process and to the entire practice of law.

The enclosed code is primarily aspirational. Compliance with the rules depends primarily upon understanding and voluntary compliance, secondarily upon re-enforcement by peer pressure and public opinion, and finally when necessary by enforcement by the courts through their inherent powers and rules already in existence. The code is not meant as a set of rules that lawyers can use and abuse to incite ancillary litigation or arguments over whether or not they have been observed.

If you would like additional copies of the code, you may re-order from the State Bar of Texas. They are excellent for furnishing to clients and for having in your office.

With each of us making a daily commitment to our profession, we can defeat Rambo, restore public confidence in our profession, have fun practicing law, faithfully serve our clients, and fulfill our responsibility to the legal system.

Very truly yours,

Eugene A. Cook

EAC:jk

Eugene A. Cook
Justice

Dondi Properties Corp. v. Commerce Sav. & Loan Asso.

United States District Court for the Northern District of Texas, Dallas Division

July 14, 1988, Filed

Civil Action Nos. CA3-87-1725-H, CA3-87-2692-D

Reporter
121 F.R.D. 284 *; 1988 U.S. Dist. LEXIS 6991 **

DONDI PROPERTIES CORPORATION and the Federal Savings and Loan Insurance Corporation as Receiver for Vernon Savings and Loan Association, FSA, Plaintiffs, v. COMMERCE SAVINGS AND LOAN ASSOCIATION, et al., Defendants. Jean Rinard KNIGHT, Plaintiff, v. PROTECTIVE LIFE INSURANCE COMPANY, Defendant

Case Summary

Procedural Posture
In consolidated cases, defendants in a civil RICO action filed a motion to dismiss the case and for sanctions under Fed. R. Civ. P. 37(b). Plaintiff, insured in a second case, based upon state insurance and consumer protection statutes, moved to strike defendant insurer's reply brief under U.S. Dist. Ct., N.D. Tex., Dallas Div., R. 5.1(f), or in the alternative, for leave to respond.

Overview
In the first case, RICO defendants moved to dismiss and for sanctions, on the grounds that plaintiffs failed to follow various orders and for attorney misconduct. In the second case, plaintiff insured moved to strike defendant insurer's reply brief which was filed without permission under U.S. Dist. Ct., N.D. Tex., Dallas Div., R. 5.1(f), or in the alternative, for leave to respond to the brief. Sitting en banc, the court adopted standards of litigation conduct for attorneys appearing in civil actions in the district, and it denied the RICO defendants' motions because there was no showing of intentional or willful conduct that warranted dismissal under Fed. R. Civ. P. 37(b). The court refused to strike defendant insurer's reply brief because it would not interfere with the court's decisional process, and it denied leave for plaintiff insured to file a response because insurer should have the opportunity to open and close the argument.

Outcome
The court denied RICO defendants' motions because there was no showing of intentional or willful conduct, it refused to strike defendant insurer's reply brief because the brief would not interfere with the court's decisional process, and it denied leave for plaintiff insured to respond to the reply brief.

LexisNexis® Headnotes

Governments > Courts > Rule Application & Interpretation

HN1[] **Courts, Rule Application & Interpretation**

Fed. R. Civ. P. 1 provides that the federal rules shall be construed to secure the just, speedy, and inexpensive determination of every action.

Civil Procedure > ... > Attorney Fees & Expenses > Basis of Recovery > Statutory Awards

Governments > Courts > Court Personnel

Civil Procedure > Discovery & Disclosure > Discovery > Protective Orders

Civil Procedure > Pretrial Matters > Conferences > General Overview

Civil Procedure > Sanctions > Misconduct & Unethical Behavior > General Overview

Governments > Courts > Authority to Adjudicate

Governments > Courts > Judges

HN2[] **Basis of Recovery, Statutory Awards**

The district courts are authorized to protect attorneys and litigants from practices that may increase their expenses and burdens, Fed. R. Civ. P. 26(b)(1) and 26(c), or may cause them annoyance, embarrassment, or oppression, Fed. R. Civ. P. 26(c), and to impose sanctions upon parties or attorneys who violate the rules and orders of the court, Fed. R. Civ. P. 16(f) and 37. The district courts likewise have the power by statute to tax costs, expenses, and attorney's fees to attorneys who unreasonably and vexatiously multiply the proceedings in any case. 28 U.S.C.S. § 1927. The district courts are also granted the authority to punish, as contempt of court, the misbehavior of court officers. 18 U.S.C.S. § 401. In addition to the authority granted the district courts by statute or by rule, the district courts possess the inherent power to regulate the administration of justice.

Civil Procedure > Attorneys > General Overview

Criminal Law & Procedure > Counsel > Right to Counsel > General Overview

Legal Ethics > Professional Conduct > Opposing Counsel & Parties

HN3[] **Civil Procedure, Attorneys**

The United States District Court for the Northern District of Texas, Dallas Division adopts the following as standards of practice to be observed by attorneys appearing in civil actions in this district: (A) In fulfilling his or her primary duty to the client, a lawyer must be ever conscious of the broader duty to the judicial system that serves both attorney and client. (B) A lawyer owes, to the judiciary, candor, diligence and utmost respect. (C) A lawyer owes, to opposing counsel, a duty of courtesy and cooperation, the observance of which is necessary for the efficient administration of the system of justice and the respect of the public it serves. (D) A lawyer unquestionably owes, to the administration of justice, the fundamental duties of personal dignity and professional integrity. (E) Lawyers should treat each other, the opposing party, the court, and members of the court staff with courtesy and civility and conduct themselves in a professional manner at all times.

Civil Procedure > Discovery & Disclosure > General Overview

Criminal Law & Procedure > Counsel > Right to Counsel > General Overview

Evidence > Privileges > Attorney-Client Privilege > Waiver

Legal Ethics > Professional Conduct > Opposing Counsel & Parties

HN4[] **Civil Procedure, Discovery & Disclosure**

The United States District Court for the Northern District of Texas, Dallas Division adopts the following as standards of practice to be observed by attorneys appearing in civil actions in this district: (F) A client has no right to demand that counsel abuse the opposite party or indulge in offensive conduct. A lawyer shall always treat adverse witnesses and suitors with fairness and due consideration. (G) In adversary proceedings, clients

are litigants and though ill feeling may exist between clients, such ill feeling should not influence a lawyer's conduct, attitude, or demeanor towards opposing lawyers. (H) A lawyer should not use any form of discovery, or the scheduling of discovery, as a means of harassing opposing counsel or counsel's client. (I) Lawyers will be punctual in communications with others and in honoring scheduled appearances, and will recognize that neglect and tardiness are demeaning to the lawyer and to the judicial system. (J) If a fellow member of the Bar makes a just request for cooperation, or seeks scheduling accommodation, a lawyer will not arbitrarily or unreasonably withhold consent. (K) Effective advocacy does not require antagonistic or obnoxious behavior and members of the Bar will adhere to the higher standard of conduct which judges, lawyers, clients, and the public may rightfully expect.

Civil Procedure > Pretrial Matters > Conferences > General Overview

Civil Procedure > ... > Discovery > Misconduct During Discovery > Motions to Compel

HN5[] **Pretrial Matters, Conferences**

See U.S. Dist. Ct., N.D. Tex., Dallas Div., R. 5.1(a).

Civil Procedure > Pretrial Matters > Conferences > General Overview

Governments > Courts > Court Personnel

Civil Procedure > ... > Discovery > Misconduct During Discovery > Motions to Compel

HN6[] **Pretrial Matters, Conferences**

A conference requires the participation of counsel for all affected parties. An attorney's refusal to return a call requesting a U.S. Dist. Ct., N.D. Tex., Dallas Div., R. 5.1(a) conference will not be tolerated. Of course, the conference requirement may be satisfied by a written communication as well. The manner in which the conference is held and the length of the conference will be dictated by the complexity of the issues and the sound judgment of attorneys in their capacities as advocates as well as officers of the court, with the objective of maximizing the resolution of disputes without court intervention.

Legal Ethics > Sanctions > General Overview

Legal Ethics > Professional Conduct > Opposing Counsel & Parties

HN7[] **Legal Ethics, Sanctions**

Except in those instances in which an attorney's conduct prejudicially affects the interests of a party opponent or impairs the administration of justice, adjudication of alleged ethical violations is more appropriately left to grievance committees constituted for such purpose.

Legal Ethics > Sanctions > General Overview

HN8[] **Legal Ethics, Sanctions**

Insuring that members of the legal profession comply with ethical standards should be a matter of concern to all attorneys, and alleged breaches should be brought to the attention of the grievance committee by an attorney without charge to a client, which is appropriate only when resolution by a court is warranted. By the same token, absent a motion to disqualify, which if granted would adversely affect his client's interests, an attorney whose conduct is called into question must himself bear the cost of defending his actions before a grievance committee.

Civil Procedure > Pleading & Practice > Pleadings > General Overview

HN9[] **Pleading & Practice, Pleadings**

A movant may not, as of right, file a reply to a response; instead, U.S. Dist. Ct., N.D. Tex., Dallas Div., R. 5.1(f) requires the movant to obtain permission to do so immediately upon receipt of a response.

Civil Procedure > Pleading & Practice > Pleadings > General Overview

HN10[] **Pleading & Practice, Pleadings**

The court is not to be understood as holding that the parties can, by agreement, bind the presiding judge to grant permission to file a reply. Where the parties have so agreed, however, the court will usually grant such permission.

Civil Procedure > Appeals > Appellate Briefs

Civil Procedure > ... > Responses > Defenses, Demurrers & Objections > General Overview

HN11[] **Appeals, Appellate Briefs**

While the determination whether to permit a reply is discretionary with each judge, the principle is well-established that the party with the burden on a particular matter will normally be permitted to open and close the briefing. Tex. Sup. Ct. R. 35(3); Fed. R. App. P. 28(c). It should thus be rare that a party who opposes a motion will object to the movant's filing a reply.

Counsel: [**1] Attorneys for Plaintiffs: CA3-87-1725-H: Don T. O'Bannon of Arter, Hadden & Witts, Dallas, Texas, and Jerome A. Hochberg and Douglas M. Mangel of Arter & Hadden, Washington, District of Columbia, for Dondi Properties Corporation, et al.

Attorneys for Defendants: CA3-87-1725-H: Ernest E. Figari, Alan S. Loewinsohn, and James A. Jones of Figari & Davenport, Dallas, Texas, for Gerald Stool, et al.

Gordon M. Shapiro, Michael L. Knapek, and Patricia J. Kendall of Jackson & Walker, Dallas, Texas, for Commerce Savings Association.

Paul E. Coggins and Weston C. Loegering of Davis, Meadows, Owens, Collier & Zachry, Dallas, Texas, for W. Deryl Comer.

Randall L. Freedman, Dallas, Texas, for Jack Franks.

Christopher M. Weil and Amy Brook Ganci of Weil & Renneker, P.C., Dallas, Texas, for R. H. Westmoreland.

Attorney for Plaintiff: CA3-87-2692-D: Mark T. Davenport of Figari & Davenport, Dallas, Texas, for Jean Rinard Knight.

Attorney for Defendant: CA3-87-2692-D: David M. Kendall of Thompson & Knight, Austin, Texas, for Protective Life Insurance Company.

Judges: Porter, Chief Judge, Sanders, Acting Chief Judge, and Woodward, Mahon, Belew, Robinson, Buchmeyer, Fish, Maloney, Fitzwater, and Cummings, District Judges.

Opinion by: PER CURIAM

Opinion

[*285] [**2] We sit en banc to adopt standards of litigation conduct for attorneys appearing in civil actions in the Northern District of Texas.

I.

Dondi Properties is a suit for recovery based upon civil RICO, common law and statutory fraud, the Texas Fraudulent Transfer Act, federal regulations prohibiting affiliate transactions, civil conspiracy, negligent misrepresentation, and usury, arising in connection with activities related to the failed Vernon Savings and Loan Association. *Knight* is an action for violations of the Texas Insurance Code and Texas Deceptive Trade Practices -- Consumer

Protection Act, and for breach of duty of good faith and breach of contract, arising from defendant's refusal to pay plaintiff the proceeds of a life insurance policy.

In *Dondi Properties,* the following motions have been referred to the magistrate pursuant to 28 U.S.C. § 636(b) and N.D. Tex. Misc. Order No. 6, Rule 2(c): the Stool defendants' [1] third motion for sanctions or, in the alternative, to compel (and supplement to the motion); the third motion for sanctions of defendant, Commerce Savings Association (and supplement to the motion); defendant, W. Deryl Comer's, first motion [**3] for sanctions or, in the alternative, motion to compel (and supplement to the motion); the Stool defendants' motion for sanctions against plaintiffs' attorney; defendant, Jack Franks', first motion for sanctions or, in the alternative, motion to compel; defendant, R. H. Westmoreland's, motion for sanctions and, in the alternative, to compel; and various submissions containing additional authorities in support of the motions and briefs already filed. Plaintiffs have responded to the motions, and the Stool defendants have filed a motion for leave to file reply to plaintiffs' response.

The sanction motions complain of plaintiffs' failure to answer interrogatories, failure to comply with prior orders of the court pertaining to discovery, misrepresenting facts to the court, and improperly withholding documents. The magistrate had previously entered orders on March 29, 1988 and April 28, 1988 and defendants contend plaintiffs' conduct with respect to prior orders of the magistrate [**4] warrants dismissing their action or awarding other relief to movants.

In *Knight,* there is pending before a judge of this court plaintiff's motion to strike a reply brief that defendant filed without leave of court. On April 8, 1988, defendant filed four motions, including motions for separate trials and to join another [*286] party. [2] On April 27, 1988, plaintiff filed her response to the motions. Thereafter, without leave of court, defendant, on May 26, 1988, filed a reply to plaintiff's response. On June 3, 1988, plaintiff filed a motion to strike the reply, to which motion defendant has filed a response.

Plaintiff contends the reply brief should be stricken because defendant did not, as required by Local Rule 5.1(f), obtain leave to file a reply, because defendant failed to seek permission immediately upon receipt of plaintiff's response, and, alternatively, because defendant's reply was filed in excess of 20 days after plaintiff filed her response. In the event the court does not strike the reply, plaintiff requests leave to file an additional response.

At the request of a member of the court, we convened the [**5] en banc court [3] for the purpose of establishing standards of litigation conduct to be observed in civil actions litigated in the Northern District of Texas. In section II of the opinion we establish such standards. In section III the magistrate decides the *Dondi Properties* motions, and in section IV a judge of the court decides the *Knight* motion, in accordance with the standards we adopt. [4]

II.

The judicial branch of the United States government is charged with responsibility for deciding cases and controversies and for administering justice. We attempt to carry out our

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[1] The Stool defendants are Gerald Stool, Donald F. Goldman, AMF Partnership, Ltd., Park Cosmopolitan Associates, Duck Hook Associates, Turnpike Waldrop Joint Venture, Alamo Associates, and Seven Flags Partnership.

[2] The other motions are motions to compel and for protective order.

[3] We concede the unusual nature of this procedure. We note, however, that the U.S. District Court for the Central District of California recently sat en banc to decide the constitutionality of the sentencing guidelines promulgated pursuant to the Sentencing Reform Act of 1984. *See United States v. Ortega Lopez,* 684 F. Supp. 1506 (C.D. Cal. 1988) (en banc).

[4] While we adopt en banc the standards for civil litigation conduct, the decisions regarding the particular motions are those of the magistrate and district judge, respectively, before whom the motions are pending.

responsibilities [**6] in the most prompt and efficient manner, recognizing that justice delayed, and justice obtained at excessive cost, is often justice denied. [5]

We address today a problem that, though of relatively recent origin, is so pernicious that it threatens to delay the administration of justice and to place litigation beyond the financial reach of litigants. 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 [**7] 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. [6] We now adopt standards designed to end such conduct.

A.

We begin by recognizing our power to adopt standards for attorney conduct in [*287] civil actions and by determining, as a matter of prudence, that we, rather than the circuit court, should adopt such standards in the first instance.

By means of the Rules Enabling Act of 1934, now codified as 28 U.S.C. § 2072, Congress has authorized the Supreme Court [**8] to adopt rules of civil procedure. The Court has promulgated rules that empower district courts to manage all aspects of a civil action, including pretrial scheduling and planning (Rule 16) and discovery (Rule 26(f)). ***HN2***[⬆] We are authorized to protect attorneys and litigants from practices that may increase their expenses and burdens (Rules 26(b)(1) and 26(c)) or may cause them annoyance, embarrassment, or oppression (Rule 26(c)), and to impose sanctions upon parties or attorneys who violate the rules and orders of the court (Rules 16(f) and 37). We likewise have the power by statute to tax costs, expenses, and attorney's fees to attorneys who unreasonably and vexatiously multiply the proceedings in any case. 28 U.S.C. § 1927. We are also granted the authority to punish, as contempt of court, the misbehavior of court officers. 18 U.S.C. § 401. In addition to the authority granted us by statute or by rule, we possess the inherent power to regulate the administration of justice. *See Batson v. Neal Spelce Associates, Inc.*, 805 F.2d 546, 550 (5th Cir. 1986) (federal courts possess inherent power to assess attorney's fees and litigation costs when losing party has acted in bad faith, vexatiously, [**9] wantonly, or for oppressive reasons); *Thomas v. Capital Security Services, Inc.*, 836 F.2d 866, 875 (5th Cir. 1988) (en banc) (district court has inherent power to award attorney's fees when losing party has acted in bad faith in actions that led to the lawsuit or to the conduct of the litigation).

We conclude also that, as a matter of prudence, this court should adopt standards of conduct without awaiting action of the circuit court. We find support for this approach in *Thomas*, where, in the Rule 11 context, the Fifth Circuit noted the singular

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[5] We do so in the spirit of Fed. R. Civ. P. 1, ***HN1***[⬆] which provides that the federal rules "shall be construed to secure the just, speedy, and inexpensive determination of every action."

[6] Nor are we alone in our observations. In December 1984 the Texas Bar Foundation conducted a "Conference on Professionalism." The conference summary, issued in March 1985, recounts similar observations from leading judges, lawyers, and legal educators concerning the subject of lawyer professionalism.

perspective of the district court in deciding the fact intensive inquiry whether to impose or deny sanctions. The court noted that trial judges are "in the best position to review the factual circumstances and render an informed judgment as [they are] intimately involved with the case, the litigants, and the attorneys on a daily basis." 836 F.2d at 873. We think the circuit court's rationale for eschewing "second-hand review of the facts" in Rule 11 cases may be applied to our adopting standards of litigation conduct: "'the district court will have a better grasp of what is acceptable trial-level practice among litigating members of [**10] the bar than will appellate judges.'". *Id.* at 873 (quoting *Eastway Construction Corp. v. City of New York,* 637 F. Supp. 558, 566 (E.D.N.Y. 1986)).

B.

We next set out the standards to which we expect litigation counsel to adhere.

The Dallas Bar Association recently adopted "Guidelines of Professional Courtesy" and a "Lawyer's Creed" [7] that are both sensible and pertinent to the problems we address here. From them ***HN3***[⬆] we adopt the following as standards of practice [8] to be observed by attorneys appearing in civil actions in this district:

> (A) In fulfilling his or her primary duty to the client, a lawyer must be ever conscious of the broader duty to the judicial system that serves both attorney and client.
>
> (B) A lawyer owes, to the judiciary, candor, diligence and utmost respect.
>
> (C) A lawyer owes, to opposing counsel, a duty of courtesy and cooperation, the observance of which is necessary for the efficient administration of our system of justice and the respect of the public it serves.
>
> (D) A lawyer unquestionably owes, to the administration of justice, the fundamental [*288] duties of personal dignity and professional integrity.
>
> (E) Lawyers should treat each other, the opposing [**11] party, the court, and members of the court staff with courtesy and civility and conduct themselves in a professional manner at all times.
>
> ***HN4***[⬆] (F) A client has no right to demand that counsel abuse the opposite party or indulge in offensive conduct. A lawyer shall always treat adverse witnesses and suitors with fairness and due consideration.
>
> (G) In adversary proceedings, clients are litigants and though ill feeling may exist between clients, such ill feeling should not influence a lawyer's conduct, attitude, or demeanor towards opposing lawyers.
>
> (H) A lawyer should not use any form of discovery, or the scheduling of discovery, as a means of harassing opposing counsel or counsel's client.
>
> (I) Lawyers will be punctual in communications with others and in honoring scheduled appearances, and will recognize that neglect and tardiness are demeaning to the lawyer and to the judicial system.
>
> (J) If a fellow member of the Bar makes a just request for cooperation, or seeks scheduling accommodation, a lawyer will not arbitrarily or unreasonably withhold consent.
>
> (K) Effective advocacy does not require antagonistic or obnoxious behavior and members of the Bar will adhere to the higher [**12] standard of conduct which judges, lawyers, clients, and the public may rightfully expect.

Attorneys who abide faithfully by the standards we adopt should have little difficulty conducting themselves as members of a learned profession whose unswerving duty is to the public they serve and to the system of justice in which they practice.

[7] We set out in an appendix pertinent portions of the guidelines and the creed in the form adopted by the Dallas Bar Association.

[8] We also commend to counsel the American College of Trial Lawyers' Code of Trial Conduct (rev. 1987). Those portions of the Code that are applicable to our decision today are set out in the appendix.

[9] Those litigators who persist in viewing themselves solely as combatants, or who perceive that they are retained to win at all costs without regard to fundamental principles of justice, will find that their conduct does not square with the practices we expect of them. Malfeasant counsel can expect instead that their conduct will prompt an appropriate response from the court, including the range of sanctions the Fifth Circuit suggests in the Rule 11 context: "a warm friendly discussion on the record, a hard-nosed reprimand [**13] in open court, compulsory legal education, monetary sanctions, or other measures appropriate to the circumstances." *Thomas,* 836 F.2d at 878. [10]

We do not, by adopting these standards, invite satellite litigation of the kind we now see in the context of Fed. R. Civ. P. 11 motions. To do so would defeat the fundamental premise which motivates our action. We do intend, however, to take the steps necessary to ensure that justice is not removed from the reach of litigants either because improper litigation tactics interpose unnecessary delay or because such actions increase the cost of litigation beyond the litigant's financial grasp. [11]

[**14] Similarly, we do not imply by prescribing these standards that counsel are excused from conducting themselves in any manner otherwise required by law or by court rule. We think the standards we now adopt are a [*289] necessary corollary to existing law, and are appropriately established to signal our strong disapproval of practices that have no place in our system of justice and to emphasize that a lawyer's conduct, both with respect to the court and to other lawyers, should at all times be characterized by honesty and fair play.

III.

The *Dondi Properties* motions referred to the magistrate for determination raise issues concerning plaintiffs' compliance with prior discovery orders of the court and the conduct of one of plaintiffs' attorneys in contacting a possible witness.

A.

Discovery Issues

Although in excess of 20 pleadings and letters from counsel have been presented to the court involving various defendants' motions for sanctions, the common denominator of all is whether or not plaintiffs have complied with the previous discovery orders of the magistrate.

The case at hand presents complex legal and factual theories involving hundreds of thousands of documents. The logistical [**15] problems presented in discovery are compounded by several factors, among them being that (a) none of the Receiver (FSLIC)'s employees were employed by either Vernon Savings and Loan Association, FSA, or its predecessor; (b) prior to the Receiver's receipt of documents they were not kept in a complete and orderly manner; (c) that plaintiffs have had three sets of attorneys of record in this case; and (d) plaintiffs and their counsel, past and present, have not taken adequate measures to assure compliance with the court's prior orders.

In seeking dismissal of plaintiffs' case, the moving defendants have categorized plaintiffs' conduct and that of their counsel as being in "bad faith" and "in

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[9] We note that these standards are consistent with both the American Bar Association and State Bar of Texas Codes of Professional Responsibility. *See, e.g.,* ethical considerations EC 7-10, EC 7-36, EC 7-37, and EC 7-38 set out in the appendix.

[10] We draw the parallel to Fed. R. Civ. P. 11 with the *caveat* that we are not adopting Rule 11 jurisprudence in the context presented here.

[11] We note, by way of example, the Dallas Bar Association guideline that eliminates the necessity for motions, briefs, hearings, orders, and other formalities when "opposing counsel makes a reasonable request which does not prejudice the rights of the client." This salutary standard recognizes that every contested motion, however simple, costs litigants and the court time and money. Yet our court has experienced an increasing number of instances in which attorneys refuse to agree to an extension of time in which to answer or to respond to a dispositive motion, or even to consent to the filing of an amended pleading, notwithstanding that the extension of time or the amended pleading would delay neither the disposition of a pending matter nor the trial of the case.

defiance" of the court's prior orders. Such characterization of a party opponent's conduct should be sparingly employed by counsel and should be reserved for only those instances in which there is a sound basis in fact demonstrating a party's deliberate and intentional disregard of an order of the court or of obligations imposed under applicable Federal Rules of Civil Procedure. Such allegations, when inappropriately made, add much heat but little light to the court's task of deciding discovery [**16] disputes.

Although there are conceded instances of neglect on the part of plaintiffs and their counsel and instances of lack of communication or miscommunication among counsel for the parties in the present discovery disputes, there is no showing of intentional or willful conduct on the part of plaintiffs or their counsel which warrants dismissal under Rule 37(b), Federal Rules of Civil Procedure. However, the disputes which exist amply demonstrate an inadequate utilization of Local Rule 5.1(a). [12]

Local Rule 5.1(a) implicitly recognizes that in general the rules dealing with discovery in federal cases are to be self-executing. The purpose of the conference requirement is to promote a frank exchange between counsel to resolve issues by agreement or to at least narrow and focus the matters in controversy before judicial resolution is sought. Regrettably over the years, in many instances the conference requirement seems to have evolved [**17] into a *pro forma* matter. With increased frequency I observe instances in which discovery disputes are resolved by the affected parties after a hearing has been set -- sometimes within minutes before the hearing is to commence. If disputes can be resolved after motions have been filed, it follows that in all but the most extraordinary circumstances, they could have been resolved in the course of Rule 5.1(a) conferences.

HN6[] A conference requires the participation of counsel for all affected parties. An attorney's refusal to return a call requesting a Rule 5.1(a) conference will not be [*290] tolerated. Of course, the conference requirement may be satisfied by a written communication as well. The manner in which the conference is held and the length of the conference will be dictated by the complexity of the issues and the sound judgment of attorneys in their capacities as advocates as well as officers of the court, with the objective of maximizing the resolution of disputes without court intervention. Properly utilized Rule 5.1(a) promotes judicial economy while at the same time reducing litigants' expenses incurred for attorneys' time in briefing issues and in preparing and presenting [**18] pleadings. [13]

Because the present controversies may well be resolved, or appreciably narrowed, following further communications among counsel and because the court is not presented with circumstances which warrant dismissal under Rule 37, the movant defendants' motions will be denied at this time.

B.

Motion for Sanctions

In their motion filed on May 18, 1988, defendants, Goldman, Stool, AMF Partnership Ltd., et al. (the Stool defendants) seek an order sanctioning the conduct of David Hammond, an attorney practicing with the firm which is counsel of record for plaintiffs.

The undisputed facts are that on or about May 9, 1988, plaintiffs' attorney had a telephone conversation with Carl Edwards in which the

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[12] In part Local Rule 5.1(a) reads as follows:

> ***HN5***[] "Before filing a motion, counsel for a moving party shall confer with the counsel of all parties affected by the requested relief to determine whether or not the contemplated motion will be opposed."

[13] When Rule 5.1(a) conferences result in agreements, counsel may wish to memorialize such agreements in writing.

attorney made inquiries about transactions pertinent to the present case, but the attorney did not identify himself as an attorney representing the plaintiffs.

As stated in the opinion issued in *Ceramco, Inc. v. Lee Pharmaceuticals,* 510 F.2d 268, 271 (2d Cir. 1975): "the courts have not only the supervisory power but also the duty and responsibility [**19] to disqualify counsel for unethical conduct *prejudicial to his adversaries."* (Emphasis added). However, in the present case movants do not seek to disqualify plaintiffs' counsel nor have they shown any prejudice resulting from the communication. ***HN7***[] Except in those instances in which an attorney's conduct prejudicially affects the interests of a party opponent or impairs the administration of justice, adjudication of alleged ethical violations is more appropriately left to grievance committees constituted for such purpose. Deferring to such bodies permits proper resolution of attorneys' conduct while at the same time relieving courts of deciding matters which are unrelated or at most peripheral to the cases before them. As reflected in the pleadings pertinent to this motion, there are both legal issues and factual conflicts which must be resolved in deciding whether ethical standards were violated. Indeed, following the filing of the motion movants have sought to depose the attorney whose conduct is at issue, which has in turn precipitated a motion for protective order filed by the plaintiffs.

HN8[] Insuring that members of the legal profession comply with ethical standards should be a [**20] matter of concern to all attorneys, and alleged breaches should be brought to the attention of the grievance committee by an attorney without charge to a client, which is appropriate only when resolution by a court is warranted. *Ceramco, Inc., supra.* By the same token, absent a motion to disqualify, which if granted would adversely affect his client's interests, an attorney whose conduct is called into question must himself bear the cost of defending his actions before a grievance committee.

For the foregoing reasons movants' motion for sanctions will be denied, but without prejudice to their counsel's right to present the allegations of misconduct to the grievance committee. The refusal to grant sanctions should not be understood as condoning an attorney's failure to identify himself and his client to a prospective witness. Had the attorney done so in the present case, the present issue may not [*291] have arisen. An attorney is held to a higher standard of conduct than non-lawyers, and unlike non-lawyers, if rebuffed by a prospective witness, the attorney may use available discovery procedures to obtain the information sought.

It is, therefore, ordered that the defendants' motions [**21] relating to discovery are denied, but without prejudice to their right to file subsequent motions, if disputes remain after their counsel and plaintiffs' counsel have engaged in a Rule 5.1(a) conference consistent with this order.

It is further ordered that the Stool defendants' motion for sanctions against plaintiffs' attorney is denied, but without prejudice to presentation of the issues raised to the appropriate grievance committee.

It is further ordered that neither the Stool defendants' counsel nor the plaintiffs' attorneys will charge their clients for any time or expenses incurred relating in any manner to the Stool defendants' motion for sanctions against plaintiffs' attorney.

IV.

In *Knight,* plaintiff moves to strike a reply brief that defendant filed without the court's permission. In the alternative, plaintiff seeks leave to file a response to the reply brief.

A.

It is undisputed that defendant did not obtain court permission to reply to plaintiff's response to defendant's motions for separate trials and to join a party. Defendant explains in its response to the

motion to strike that "because of the flurry of activity in this case, it failed to secure permission [**22] from the Presiding Judge to file the reply." Although defendant clearly violated a Local Rule of this court, the court concludes that the error did not warrant plaintiff's filing a motion to strike.

The en banc court has adopted standards of civil litigation conduct that apply to attorneys who practice before this court. One standard requires that attorneys cooperate with one another in order to promote "the efficient administration of our system of justice." This and the other standards adopted by the court attempt to satisfy the goals of reducing litigation costs and expediting the resolution of civil actions. The attorneys in *Knight* did not cooperate in connection with the filing of the reply brief, and there resulted a dispute that has presumably increased counsel's fees to their clients, has unquestionably required of the court an unnecessary expenditure of time, and has not materially advanced the resolution of the merits of this case.

In Local Rule 5.1 we have established the briefing and decisional regimens for contested motions. Rules 5.1(a), (c), and (d) prescribe the movant's obligations. Rule 5.1(e) dictates the deadline for filing a response and provides when contested [**23] motions shall be deemed ready for disposition. ***HN9***[↑] A movant may not, as of right, file a reply to a response; instead, Rule 5.1(f) requires the movant to obtain permission to do so immediately upon receipt of a response. In the present case, defendant's counsel failed to cooperate with plaintiff's counsel because he did not ask him to agree [14] to the filing of a reply. Plaintiff's counsel failed to cooperate when he filed the motion to strike the reply. [15]

HN11[↑] While our court has decided that the determination whether to permit a reply is discretionary with each judge, the principle is well-established that the party with [**24] the burden on a particular matter will normally be permitted to open and close the briefing. *See, e.g.*, Sup. Ct. R. 35(3); Fed. R. App. P. 28(c). It should thus be rare that a party [*292] who opposes a motion will object to the movant's filing a reply.

In the present case, the parties have presumably incurred the expense of preparing, and the court has expended time considering, pleadings that go *not* to a question that will advance the merits of this case but instead to a collateral determination whether the court should consider a particular pleading. In isolation, such expenditures may appear inconsequential. Considered in the proper context of numerous civil actions and frequent disputes, it is apparent that cooperation between opposing counsel is essential to the efficient operation of our justice system.

B.

Turning to the merits of the motion to strike, the court concludes that the reply brief should not be stricken and that plaintiff should not be permitted to file a further response. Although defendant did not immediately seek permission to file a reply, the court has yet to consider the underlying substantive motions; it thus will not interfere with the court's decisional [**25] process to consider the reply. The court declines to permit plaintiff to file a further response because the burden on the motions is upon the defendant, who should thus be given the opportunity to open and close the argument.

SO ORDERED.

Filed July 14th 1988 by Order of the Court.

APPENDIX

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[14] ***HN10***[↑] The court is not to be understood as holding that the parties can, by agreement, bind the presiding judge to grant permission to file a reply. Where the parties have so agreed, however, the court will usually grant such permission.

[15] Plaintiff's motion to strike contains a certificate of conference that states that defendant and plaintiff could not agree regarding the motion to strike. Defendant disputes in its response that plaintiff and defendant had such a conference, but states that had there been one, defendant would have opposed the motion to strike.

Excerpts from the **Dallas Bar Association Guidelines of Professional Courtesy**

PREAMBLE

A lawyer's primary duty is to the client. But in striving to fulfill that duty, a lawyer must be ever conscious of the broader duty to the judicial system that serves both attorney and client.

A lawyer owes, to the judiciary, candor, diligence and utmost respect.

A lawyer owes, to opposing counsel, a duty of courtesy and cooperation, the observance of which is necessary for the efficient administration of our system of justice and the respect of the public it serves.

A lawyer unquestionably owes, to the administration of justice, the fundamental duties of personal dignity and professional integrity.

In furtherance of these fundamental concepts, the following Guidelines of Professional Courtesy are hereby adopted.

COURTESY, CIVILITY AND PROFESSIONALISM

1. General Statement

[**26] (a) Lawyers should treat each other, the opposing party, the court and members of the court staff with courtesy and civility and conduct themselves in a professional manner at all times.

(b) The client has no right to demand that counsel abuse the opposite party or indulge in offensive conduct. A lawyer shall always treat adverse witnesses and suitors with fairness and due consideration.

(c) In adversary proceedings, clients are litigants and though ill feeling may exist between clients, such ill feeling should not influence a lawyer's conduct, attitude, or demeanor towards opposing lawyers.

2. Discussion

(a) A lawyer should not engage in discourtesies or offensive conduct with opposing counsel, whether at hearings, depositions or at any other time when involved in the representation of clients. In all contacts with the court and court personnel, counsel should treat the court and its staff with courtesy and respect and without regard to whether counsel agrees or disagrees with rulings of the court in any specific case. Further, counsel should not denigrate the court or opposing counsel in private conversations with their own client. We should all remember that the disrespect [**27] we bring upon our fellow members of the Bar and the judiciary reflects [*293] on us and our profession as well.

(b) Lawyers should be punctual in fulfilling all professional commitments and in communicating with the court and fellow lawyers.

DEPOSITIONS, HEARINGS, AND DISCOVERY MATTERS

1. General Statement

(a) Lawyers should make reasonable efforts to conduct all discovery by agreement.

(b) A lawyer should not use any form of discovery, or the scheduling of discovery, as a means of harassing opposing counsel or his client.

(c) Requests for production should not be excessive or designed solely to place a burden on the opposing party, for such conduct in discovery only increases the cost, duration, and unpleasantness of any case.

2. Scheduling Lawyers should, when practical, consult with opposing counsel before scheduling hearings and depositions in a good faith attempt to avoid scheduling conflicts.

3. Discussion

(a) General Guidelines

(1) When scheduling hearings and depositions, lawyers should communicate with the opposing counsel in an attempt to

schedule them at a mutually agreeable time. This practice will avoid unnecessary delays, expense to clients, [**28] and stress to lawyers and their secretaries in the management of the calendars and practice.

(2) If a request is made to clear time for a hearing or deposition, the lawyer to whom the request is made should confirm that the time is available or advise of a conflict within a reasonable time (preferably the same business day, but in any event before the end of the following business day).

(3) Conflicts should be indicated only when they actually exist and the requested time is not available. The courtesy requested by this guideline should not be used for the purpose of obtaining delay or any unfair advantage.

(b) Exceptions to General Guidelines

(1) A lawyer who has attempted to comply with this rule is justified in setting a hearing or deposition without agreement from opposing counsel if opposing counsel fails or refuses promptly to accept or reject a time offered for hearing or deposition.

(2) If opposing counsel raises an unreasonable number of calendar conflicts, a lawyer is justified in setting a hearing or deposition without agreement from opposing counsel.

(3) If opposing counsel has consistently failed to comply with this guideline, a lawyer is justified in [**29] setting a hearing or deposition without agreement from opposing counsel.

(4) When an action involves so many lawyers that compliance with this guideline appears to be impractical, a lawyer should still make a good faith attempt to comply with this guideline.

(5) In cases involving extraordinary remedies where time associated with scheduling agreements could cause damage or harm to a client's case, then a lawyer is justified in setting a hearing or deposition without agreement from opposing counsel.

[*294] 4. Minimum Notice for Depositions and Hearings

(a) Depositions and hearings should not be set with less than one week notice except by agreement of counsel or when a genuine need or emergency exists.

$

(b) If opposing counsel makes a reasonable request which does not prejudice the rights of the client, compliance herewith is appropriate without motions, briefs, hearings, orders and other formalities and without attempting to exact unrelated or unreasonable consideration.

5. Cancelling Depositions, Hearings and Other Discovery Matters

(a) General Statement Notice of cancellation of depositions and hearings should be given to the court and opposing counsel at the earliest [**30] possible time.

(b) Discussion

(1) Calling at or just prior to the time of a scheduled hearing or deposition to advise the court or opposing counsel of the cancellation lacks courtesy and consideration.

(2) Early notice of cancellation of a deposition or a hearing avoids unnecessary travel and expenditure of time by opposing counsel, witnesses, and parties. Also, early notice of cancellation of hearings to the Court allows the time previously reserved to be used for other matters.

* * * *

TIME DEADLINES AND EXTENSIONS

1. General Statement Reasonable extensions of time should be granted to opposing counsel where such extension will not have a material, adverse effect on the rights of the client.

2. Discussion

(a) Because we all live in a world of deadlines, additional time is often required to complete a

given task.
(b) Traditionally, members of this bar association have readily granted any reasonable request for an extension of time as an accommodation to opposing counsel who, because of a busy trial schedule, personal emergency or heavy work load, needs additional time to prepare a response or comply with a legal requirement.

(c) This tradition should continue; [**31] provided, however, that no lawyer should request an extension of time solely for the purpose of delay or to obtain any unfair advantage.
(d) Counsel should make every effort to honor previously scheduled vacations of opposing counsel which dates have been established in good faith.
* * * *

Dallas Bar Association Lawyer's Creed:

1. I revere the Law, the System, and the Profession, and I pledge that in my private and professional life, and in my dealings with fellow members of the Bar, I will uphold the dignity and respect of each in my behavior toward others.
2. In all dealings with fellow members of the Bar, I will be guided by a fundamental sense of integrity and fair play; I know that effective advocacy does not mean hitting below the belt.
3. I will not abuse the System or the Profession by pursuing or opposing discovery through arbitrariness or for the purpose of harassment or undue delay.

4. I will not seek accommodation from a fellow member of the Bar for the rescheduling of any Court setting or discovery [*295] unless a legitimate need exists. I will not misrepresent conflicts, nor will I ask for accommodation for the purpose of tactical advantage or undue delay.

[**32] 5. In my dealings with the Court and with fellow counsel, as well as others, my word is my bond.
6. I will readily stipulate to undisputed facts in order to avoid needless costs or inconvenience for any party.
7. I recognize that my conduct is not governed solely by the Code of Professional Responsibility, but also by standards of fundamental decency and courtesy.
8. I will strive to be punctual in communications with others and in honoring scheduled appearances, and I recognize that neglect and tardiness are demeaning to me and to the Profession.
9. If a fellow member of the Bar makes a just request for cooperation, or seeks scheduling accommodation, I will not arbitrarily or unreasonably withhold consent.
10. I recognize that effective advocacy does not require antagonistic or obnoxious behavior, and as a member of the Bar, I pledge to adhere to the higher standard of conduct which we, our clients, and the public may rightfully expect.

The **American College of Trial Lawyers' Code of Trial Conduct** (rev. 1987) provides, in pertinent part:

PREAMBLE

Lawyers who engage in trial work have a specific responsibility to strive for prompt, efficient, ethical, fair and just [**33] disposition of litigation . . . .
* * * *
To his client, a lawyer owes undivided allegiance, the utmost application of his learning, skill and industry, and the employment of all appropriate legal means within the law to protect and enforce legitimate interests. In the discharge of this duty, a lawyer should not be deterred by any real or fancied fear of judicial disfavor, or public unpopularity, nor should he be influenced directly or indirectly by any considerations of self-interest. To opposing counsel, a lawyer owes the duty of courtesy, candor in the pursuit of the truth,

cooperation in all respects not inconsistent with his client's interests and scrupulous observance of all mutual understandings.

To the office of judge, a lawyer owes respect, diligence, candor and punctuality, the maintenance of the dignity and independence of the judiciary, and protection against unjust and improper criticism and attack, and the judge, to render effective such conduct, has reciprocal responsibilities to uphold and protect the dignity and independence of the lawyer who is also an officer of the court.

To the administration of justice, a lawyer owes the maintenance of professional dignity and [**34] independence. He should abide by these tenets and conform to the highest principles of professional rectitude irrespective of the desires of his client or others.

This Code expresses only minimum standards and should be construed liberally in favor of its fundamental purpose, consonant with the fiduciary status [*296] of the trial lawyer, and so that it shall govern all situations whether or not specifically mentioned herein.

* * * *

12. DISCRETION IN COOPERATING WITH OPPOSING COUNSEL

The lawyer, and not the client, has the sole discretion to determine the accommodations to be granted opposing counsel in all matters not directly affecting the merits of the cause or prejudicing the client's rights, such as extensions of time, continuances, adjournments and admission of facts. In such matters no client has a right to demand that his counsel shall be illiberal or that he do anything therein repugnant to his own sense of honor and propriety.

13. RELATIONS WITH OPPOSING COUNSEL

(a) A lawyer should adhere strictly to all express promises to and agreements with opposing counsel, whether oral or in writing, and should adhere in good faith to all agreements implied by the circumstances or [**35] by local custom. When he knows the identity of a lawyer representing an opposing party, he should not take advantage of the lawyer by causing any default or dismissal to be entered without first inquiring about the opposing lawyer's intention to proceed.

(b) A lawyer should avoid disparaging personal remarks or acrimony toward opposing counsel, and should remain wholly uninfluenced by any ill feeling between the respective clients. He should abstain from any allusion to personal peculiarities and idiosyncracies of opposing counsel.

* * * *

American Bar Association and **State Bar of Texas Codes of Professional Responsibility** ethical considerations:

EC 7-10. The duty of a lawyer to represent his client with zeal does not militate against his concurrent obligation to treat with consideration all persons involved in the legal process and to avoid the infliction of needless harm.

EC 7-36. Judicial hearings ought to be conducted through dignified and orderly procedures designed to protect the rights of all parties. Although a lawyer has the duty to represent his client zealously, he should not engage in any conduct that offends the dignity and decorum of proceedings. While [**36] maintaining his independence, a lawyer should be respectful, courteous, and above-board in his relations with a judge or hearing officer before whom he appears. He should avoid undue solicitude for the comfort or convenience of judge or jury and should avoid any other conduct calculated to gain special consideration.

EC 7-37. In adversary proceedings, clients are litigants and though ill feeling may exist between clients, such ill feeling should not influence a lawyer in his conduct, attitude, and

demeanor towards opposing lawyers. A lawyer should not make unfair or derogatory personal reference to opposing counsel. Haranguing and offensive tactics by lawyers interfere with the orderly administration of justice and have no proper place in our legal system.

EC 7-38. A lawyer should be courteous to opposing counsel and should accede to reasonable requests regarding court proceedings, settings, continuances, waiver of procedural formalities, and similar matters which do not prejudice the rights of his client. He should follow local customs of courtesy or practice, unless he gives timely notice to opposing counsel of his intention not to do so. A lawyer should be punctual [**37] in fulfilling all professional commitments.

EC 7-39. In the final analysis, proper functioning of the adversary system depends upon cooperation between lawyers and tribunals in utilizing procedures which will preserve the impartiality of the tribunal and make their decisional processes prompt and just, without impinging upon the obligation of the lawyer to represent his client zealously within the framework of the law.

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STATE BAR OF TEXAS

March 5, 1990

Justice Eugene Cook
Supreme Court of Texas
P.O. Box 12248
Austin, Texas 78711

Dear Judge Cook,

I thought you might like to know that in addition to the original 55,000 copy mailing of the Texas Lawyers Creed to State Bar members, we have filled orders for an additional 31,380 as of March 1st.

Lawyers have been ordering quantities of approximately 5 to 500. This number includes the copies you have distributed. We have also received several calls from out-of-state requesting copies.

Congratulations on your efforts. It was a pleasure working with you on this project.

Sincerely,

Diana Corbin

Diana Corbin

DC/pd

P. O. Box 12487 / Austin, Texas 78711

Sunday, November, 22, 2009 OUTLOOK ☆☆☆ HOUSTON CHRONICLE B11

PROFESSIONAL CONDUCT

Lawyer's creed curbed 'sharp practices'

Twenty years ago, courts issued landmark code

By JUSTICE DON WILLETT and KELLY FRELS

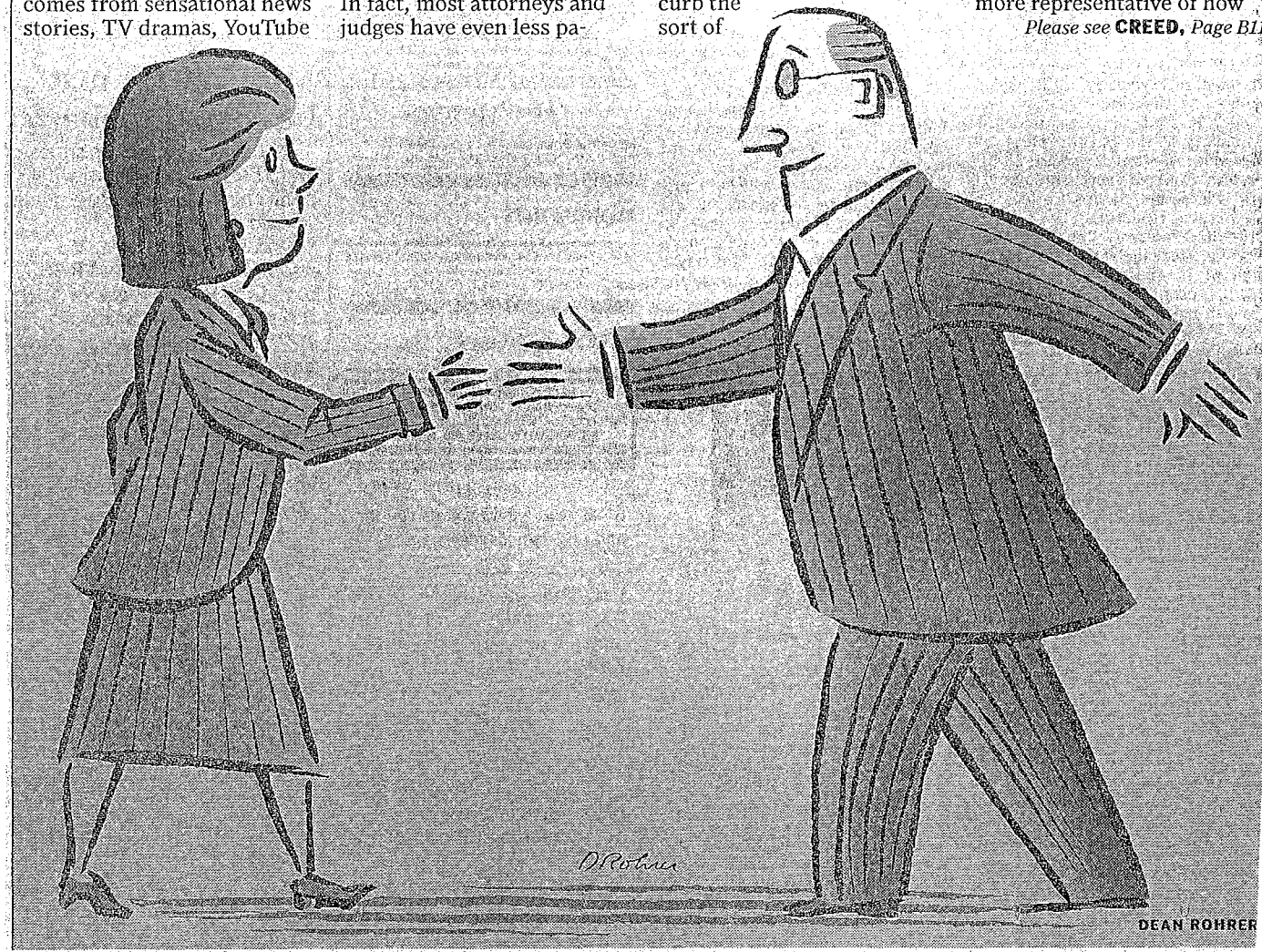
IF everything you know — or think you know — about the legal profession comes from sensational news stories, TV dramas, YouTube videos or lawyer jokes, you might think that attorneys are 24/7 connivers who fixate on one thing: using any devious means necessary to win.

Here in Texas, however, the reality is very different. The vast majority of Texas lawyers are committed professionals who pursue their vocation with candor, civility, courtesy and compassion. In fact, most attorneys and judges have even less patience for deception or obstinacy in their own ranks than does the general public.

But you don't have to take our word for it. Twenty years ago this month, the highest courts in Texas issued a landmark document known as the Texas Lawyer's Creed. The creed, covering every lawyer in the state, is an aspirational code of conduct that aims to curb the sort of unsavory behavior regularly offered as examples of what ails the legal profession.

Never heard of the Texas Lawyer's Creed? That's not surprising; a definitive statement of how lawyers honor their professional obligations does not make for a riveting news story. Nonetheless, the creed's mandate for professionalism is far more representative of how

Please see **CREED,** *Page B11*



DEAN ROHRER

CREED:

Courts issued code of conduct

CONTINUED FROM PAGE B10

real Texas lawyers act than anything you may have seen elsewhere.

The creed has its origins in the 1980s with the Dallas and Houston bar associations, when many attorneys and judges became concerned about the overly aggressive actions of a few Rambo-like members of the profession. One Texas court warned that "unnecessary contention and sharp practices between lawyers" were "so pernicious" that they threatened the administration of justice. Strong words -- followed soon by strong action.

In November 1989, the Supreme Court of Texas and the Texas Court of Criminal Appeals stepped in before the problem became widespread, issuing the Texas Lawyer's Creed by court order, an order still in effect today. (You can find it online at www.texasbar.com.) The creed was born two days before the Berlin Wall fell, and while you can't credit the Texas Lawyer's Creed with winning the Cold War, issuing the creed advanced courtesy here in Texas just as opening the wall advanced democracy abroad.

What does the creed do? It exhorts every Texas lawyer to adhere to a series of professional mandates when dealing with clients, judges and one another. Predicated upon the maxim that attorneys and their clients can "disagree without being disagreeable," the creed ensures that the legal system focuses on dispensing justice and meeting each client's needs, not waging verbal warfare. Among other things, it urges attorneys to:

- Achieve the client's objectives as quickly and economically as possible;
- treat opposing parties and witnesses with fairness and due consideration;
- avoid pursuing tactics that are intended primarily for delay;
- be courteous, civil and prompt in oral and written communications;
- avoid disparaging personal remarks or acrimony toward parties, witnesses and other lawyers;
- conduct themselves in a professional manner in court;
- treat counsel, opposing parties, judges and court staff with courtesy and civility;
- avoid conduct that offends the dignity and decorum of the proceedings;
- avoid misrepresenting, mischaracterizing, or misquoting facts or authorities to gain an advantage.

In the last 20 years, Texas judges have cited the creed on several occasions in addressing the issue of attorney incivility. Moreover, all lawyers are urged to advise their clients of the creed's contents, particularly the provisions that prohibit a client from instructing a lawyer to engage in abusive or offensive conduct.

Bottom line: Texas lawyers are more professional — and legal proceedings are more civil and dignified — than you might have been led to believe. Far from being fodder for jokes, most Texas lawyers and judges view their profession as a sacred trust and take seriously their duty to help facilitate the peaceful resolution of disputes in a manner consistent with our democratic ideals.

So the next time you see a fictional lawyer on television playing fast and loose with the rules or thumbing their nose at common decency, remember: It's just a TV show. In Texas, at least, the reality is much different, and the Texas Lawyer's Creed is one key reason why.

Willett is a justice on the Supreme Court of Texas and court liaison to the Texas Center for Legal Ethics; Frels, a former president of the State Bar of Texas, is a Houston attorney and chair of the board of trustees of the Texas Center for Legal Ethics.

Monday, January 8, 1990 * Austin American-Statesman B3

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Texas lawyers told to be more polite

Recently approved creed seeks to end unsavory 'Rambo tactics' in courtrooms

DALLAS (AP) — Texas' highest courts have issued a tough order for the state's 52,000 lawyers: Try to be nice.

No more obnoxiousness. No more tit-for-tat unprofessional behavior. No more stalling tactics. And no "allusions to personal peculiarities or idiosyncrasies of opposing counsel" will be allowed.

So declares a new Lawyer's Creed recently approved by the Texas Supreme Court and the Texas Court of Criminal Appeals.

Lawyers and judges say the let's-be-civil creed — the first such statewide code in the nation — is overdue.

Lawyers and judges concede that their profession probably never will set standards for the social graces, but they hope the decree will produce better manners.

"It's hard to quantify, but I think it has an effect," Texas Supreme Court Justice Eugene Cook told *The Dallas Morning News*. "It's kind of like dieting. It's a battle that we can win, but it's not going to be done overnight."

Cook said the Lawyer's Creed stemmed from efforts by Dallas and Houston legal associations to curb an increase in bad behavior and needlessly aggressive courtroom tactics.

The offending behavior — ranging from rudeness to ignoring court rules, engaging in lengthy procedural delays and even fistfights — has been clogging court schedules and hampering disposition of cases.

Cook said he has seen lawyers try to reschedule proceedings on dates that were most likely to bother an opponent.

"If they know of a time that will be inconvenient — say the day your wife is having a baby or the week you've been planning all year for a vacation — that's when they'll schedule it," he said.

"Some people think that it's the way to practice law, to be rude and abusive and try to intimidate the other side."

> "It's kind of like dieting. It's a battle that we can win, but it's not going to be done overnight."
>
> — Justice Eugene Cook

He said the problems have become more common during the past five years.

Many senior members of the Dallas Bar Association attribute the problem in part to the increase of lawyers in the state's largest cities, said U.S. District Judge A. Joe Fish.

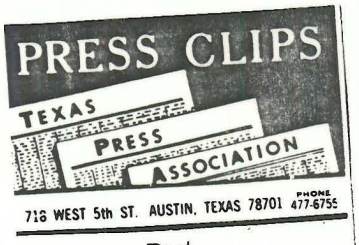
"I think the Rambo tactics arise out of the feeling that 'I'm never going to see the other lawyer again,'" he said.

Dallas Bar Association President Al Ellis said financial woes have also increased courtroom problems.

"As the law firms have gotten bigger and the economy has gone down, there's been a lot of pressure on younger and middle-management lawyers to produce, and some have responded with this kind of behavior," he said.

The 34-part Lawyer's Creed was developed by a committee with representatives from 18 legal associations in the state. It relies on voluntary compliance and includes no specific penalties.

"Some judges have copies of the creed pasted to their courthouse doors," Cook said. "They tell the lawyers (to) go outside and read it and don't come back in until they learn how to act accordingly."



Post
Houston, Texas
NOV 23 1989

Courts adopt standard of conduct for lawyers

ASSOCIATED PRESS

AUSTIN — The Texas Supreme Court and Texas Court of Criminal Appeals have adopted a "lawyer's creed" to set a standard of conduct for Texas' 52,000 lawyers.

The Texas Supreme Court is the first state supreme court to endorse a code of conduct for lawyers, the State Bar of Texas said Wednesday.

Supreme Court Justice Eugene Cook said the code is aimed, in part, at "Rambo-type" lawyers for whom "litigation has become synonymous with all-out war."

Crack down on Rambo lawyers

The Texas Supreme Court and the Court of Criminal Appeals recently approved a code of professionalism to get tough on Rambo lawyers — a new breed of win-at-all-costs litigators who are criticized for being abusive, hostile and obstructionist.

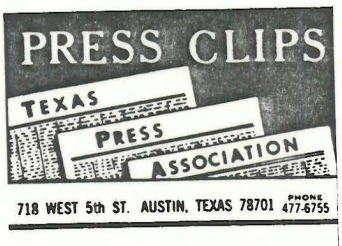
The code carries no new disciplinary sanctions, but its message is clear.

"The Supreme Court of Texas and the Court of Criminal Appeals are committed to eliminating a practice in our state by a minority of lawyers of abusive tactics," said the courts' order. "The abusive tactics range from lack of civility to ourtright hostility and obstructionism. Such behavior does not serve justice but tends to delay and often deny justice."

The new rules include pledges that lawyers will not harass the opposing party or take actions intended primarily to cost the other side money. It sounds at times like a primer on basic human kindness with statements such as: "My word is my bond" and "I can disagree without being disagreeable."

One tenet requires lawyers to avoid disparaging personal remarks toward others involved in legal proceedings and to "abstain from any allusion to personal peculiarities or idiosyncracies of opposing counsel."

Supreme Court Justice Eugene Cook led the drive for the code, which is the first in the nation to be sanctioned by the state's highest courts.



Courier-Times-Telegraph
Tyler, Texas
NOV 23 1989

Lawyer's Creed Adopted By Court

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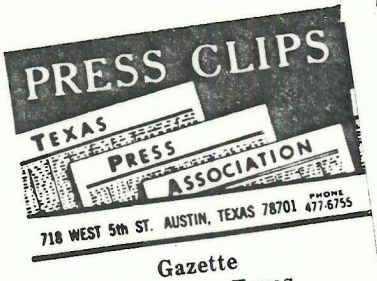
The creed says "abusive tactics" of lawyers "range from lack of civility to outright hostility and obstructivism."

The State Bar said the Texas Lawyer's Creed is being published in the Texas Bar Journal.



Gazette
Texarkana, Texas
NOV 23 1989

Creed designed to curb lawyers' conduct

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The creed says "abusive tactics" of lawyers "range from lack of civility to outright hostility and obstructivism."

The State Bar said the Texas Lawyer's Creed is being published in the Texas Bar Journal.

REFLECTIONS ON THE TEXAS LAWYER'S CREED

BY
FRED HAGANS, JAMES H. "BLACKIE" HOLMES III,
JUSTICE EUGENE A. COOK, AND JUDGE LAMAR MCCORKLE

The Texas Bar Journal *asked four of the principals involved in the drafting of the Texas Lawyer's Creed to offer their personal reflections on its 20th anniversary. The authors have collaborated on an article, available at* ***www.texasbar.com/tbj****, which details judicial references to the Creed. At the time the magazine went to press, the authors were preparing a one-hour ethics CLE webcast that will be available through* ***www.texasbarcle.com****.*

HAGANS: *We Can Do Better*

I am proud to be a lawyer. I am proud to have been part of the group of people who came together to generate the Texas Lawyer's Creed. Do I think the Creed has been beneficial? Yes, I do. Do I think that the Creed was the final and complete answer to the problem? Of course not.

The atmosphere in which the Supreme Court of Texas Committee on Professionalism began its work was charged with fear that unprofessional conduct had reached epidemic stage. It should not be forgotten, however, that respected members of the bar were concerned that the Committee's work would simply become a tool to stifle creativity and improperly sterilize the litigation process.

I was honored when Justice Eugene Cook called me, a plaintiffs' lawyer, and asked if I would serve as vice chair of the Committee alongside Blackie Holmes, a defense lawyer. I continue to feel honored that I had the opportunity to participate with the many outstanding members of the bar who participated in this effort. The Committee represented a cross-section of the bar in terms of geography and the types of law members practiced.

I remember the sessions in which the drafting subcommittee met to discuss both general topics and very specific details of how things should be expressed. The subcommittee included U.S. District Judge Norman Black, State District Judge Lamar McCorkle, and attorneys David Keltner, Blackie Holmes, and myself. Justice Cook attended and actively participated in the meetings. Although the group was amiable and professional, there were vigorous discussions about what to include. One principle permeated the process: we agreed to seek the best possible product, not just what was acceptable to a majority of the Committee. The subcommittee unanimously approved the final product before it was submitted to the entire Professionalism Committee.

Over the last 20 years, I have often been reminded that professionalism is more a journey than a destination. It is more a process than a goal or standard. I have also noted that the term *professionalism* is easier to define than to apply. I once commented to a CLE audience that many lawyers think of professionalism as follows:

Professionalism is the way I conduct myself and treat others. Unprofessional conduct is the way others practice and treat me. Few lawyers perceive their own conduct, however inappropriate it may be objectively judged, as unprofessional.

There are many things that affect the way in which we conduct ourselves — the desire to attract or keep clients, the stakes involved, a society that embraces the philosophy that the "ends justify the means," a changing judiciary, and a social and political atmosphere in which lawyers generally — and trial lawyers specifically — are targets of rhetorical attack. All of these things contribute to the way in which lawyers conduct themselves.

One specific area of concern is the increasing politicization of the judiciary and the judicial process. The judiciary, as one of the three branches of government, has always been a part of the political process. Whether judges are appointed or elected, the selection process seems to focus more on their political affiliation and ideology than on their judicial qualifications. I remember a campaign by a civil district judge seeking re-election in which he stressed his strong belief in the death penalty. While this may have been politically attractive, it had nothing to do with the cases that came before him on his civil docket.

During the last 20 years, technology has had an impact on professionalism — largely, in my opinion, a negative impact. One of culprits is the increased use of email as the primary method of communication. Perhaps I am just old-fashioned. However, I frequently see examples of mean, nasty, and offensive statements in emails that would never be uttered in person. The challenge to be professional is a difficult but worthy goal.

One way that we can all improve the process is to respect the process. Today, the entire judicial process is under attack. When

judges or juries rule for you, they are generally viewed as brilliant and thoughtful. When they rule against you, they are often vilified as stupid and corrupt. As professionals, we can do better.

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HOLMES: *Professionalism from Within*

It does not matter the year or era, the core principles of professionalism remain the same. Civility and credibility are paramount. True professionalism cannot be legislated. Ethical conduct can be codified, but professionalism must come from within the lawyer. A lawyer can be ethical but not professional. If we want professionalism to be a reality, then we must be willing to make a commitment that it will not only be reflected in our daily conduct but will be enshrined in our hearts as well. It seems to me a lawyer should and must want to be civil and credible in dealing with those who are a part of the practice of law. Why not?

When I began practicing law in 1959, it was considerably different. The level of technology was not as advanced. I dictated to a secretary across my desk, and she used carbon paper to make duplicate copies. Reproduction of documents was accomplished by wet and sticky cylinders, which smelled and took forever to dry. Even the switchboard operator at my firm used the old "hello girl" phone banks that required the use of a cord to make a connection on incoming or outgoing telephone calls. Briefing a legal topic was really an art, and the use of the Blue Book and Shepardizing resulted in cases found that were not always discovered by your adversary. Today's technology makes it a lot easier to spit out generic discovery forms and reams of paperwork. The paper battle is horrendous, and we are all guilty of it. I truly believe if your first motion to compel discovery contains a demand for sanctions, then counsel should be required to write the motion in longhand. Technology has to some extent affected our civility to one another in what should be an admired profession.

Not too long ago, the scheduling of a deposition was done by agreement through a telephone call or written inquiry setting forth realistic dates for taking the deposition, not only as to the day but the time in the future. Now, many times the first knowledge that a deposition is scheduled is the notice and *duces tecum* you receive, and so often the dates are not convenient. As a result, telephone calls are necessitated that should have been made in the first place, or the preparation of a motion to quash is required, all of which results in unnecessary time and expense to the client.

The Texas Lawyer's Creed and guidelines for professional courtesy are attempts to put the word "fun" back into the practice, advance the administration of justice, and elevate the legal system to the exalted plateau it deserves. Some believe that through obnoxious, belligerent, and discourteous behavior, the adversary will be intimidated and provoked into similar conduct or wilt under the attack. The opposite should be true, for if you stand by the traditions of courtesy and civility, the adversary might truly see the futility in those efforts and raise such conduct to your level rather than your stooping to the low road.

It is hard to say what the causes are for the situation in which we find ourselves. Is it increased salaries to associates who feel the need to worship at the altar of the billable hour resulting in unnecessary paperwork and fudging on timesheet entries, or competition for legal representation, or lack of true implementation of a mentor system, or just downright erosion in the character of society? Rena Pederson, writing in the *Dallas Morning News*, observed that the code of personal behavior established by the 110 Rules of Civility authored in 1745 by George Washington when he was 14 years of age are relevant today. In making this observation, she stated, "Since the social revolution of the 1960s, the trend has been to be non-judgmental. Which meant we leveled down. Everything became relative. Any new way was considered better than the old way. Do your own thing replaced do the right thing. Somewhere along the way we forgot that just because we have the freedom to act to extremes doesn't mean we should." Whatever the reason, it is up to us to right the wrong.

The creeds and guidelines that many have worked very hard to prepare will only change the lack of professionalism if a full, good-faith effort is made by all of us to read, abide by, and communicate to each other these guidelines. While the finger can be pointed at many, it is incumbent that we start with ourselves as members of the practicing bar, to work together in an

attempt to change the problem. The time has come where we, as members of a prestigious profession, start behaving as such, especially among ourselves. Only by unified effort within the legal community will the erosion of professionalism be reversed. The guidelines and creeds are a magnificent start to the solution of the problems within the legal community.

We are a profession and must never forget it. Each day we must renew our commitment to those principles that make the practice of law such a noble endeavor.

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COOK: *The Need for Heroes*

By 1988, lack of professionalism had reached epidemic proportions. Attending an American Bar Association program in Chicago, I learned how widespread lack of civility was in the practice of law. I wanted to use the influence of the Court to address the problem.

After discussion, the Court established an Advisory Committee on Professionalism. One of the goals was to represent all aspects of the legal profession. The Court appointed plaintiff and defense lawyers, law school deans and professors, federal and state judges, sole practitioners, and attorneys from medium and large firms. The committee devoted its work to how we could improve the practice of law. Our ancestors would have been proud of the committee and how it handled its task. The lawyers faced the problems with a spirit of common calling.

For many years, I was a volunteer in Special Olympics Texas. One of our oft-repeated mottos is "Together we all win." I appointed Fred Hagans and Blackie Holmes as vice chairs and I served as overall chair. There was no clash of egos. Committee members were able to focus on the common good. Committee members included Judge Norman W. Black, David Burrow, Tom H. Davis, Judge Lamar McCorkle, Dean Frank Newton, Dean Charles Barrow, Bob Sheehy, and Jim Branton. One of my law clerks, Warren Harris, assisted us.

Is the problem cured? No, but we have made noticeable progress. Our long history shows that we will not surrender our proud heritage.

In 1997, while driving to the office, I heard a radio program that was bashing lawyers. I thought, "Why doesn't someone talk about all the good lawyers have done?" I called the ABA and asked to be connected with the department that would have such information. No such luck. I then called the State Bar of Texas and a number of legal organizations. Still no luck. I decided to research and write about my findings. The result, "I'm proud to be a lawyer," was published as an op-ed in the *Houston Chronicle*.

I need heroes. I always have. They give me strength and hope and courage. Many lawyers have been my heroes. And for this I am grateful.

Lawyer bashing is a national pastime, the theme of regular articles and letters to editors, the punch line to countless jokes, and a surefire ratings booster for talk-show hosts.

Despite these insults, I am proud to be a lawyer. I know what many members of the public apparently do not — that history is filled with generations of lawyers who, like those that Shakespeare's Dick the Butcher would kill, have stood against tyranny to build a free society.

Of the 56 men who signed the Declaration of Independence, 25 were lawyers. Of the 55 delegates to the Constitutional Convention in Philadelphia who hammered out the Constitution, 31 were lawyers. More than half of the nation's presidents have been lawyers. Most Americans know that Abraham Lincoln, president during the Civil War, was a lawyer. But many do not know that Woodrow Wilson, who led us through World War I, was a lawyer or that Franklin Delano Roosevelt, president during most of World War II, was also a lawyer.

Lawyers were no less active as leaders during other challenging periods in American history. Who can remain untouched by the work and words of Barbara Jordan during Watergate: "My faith in our Constitution is whole. It is complete. It is total."

Jordan was not the first Texas lawyer to defend the cause of freedom. Six stubborn lawyers fortified themselves with 180 other souls to defend the Alamo against impossible odds. William Barrett Travis, commander of the Alamo, was only 26 years old when he wrote an open letter to the people of Texas and all Americans, promising that he would "never surrender or retreat." What most people do not know is that Travis had a law practice in Anahuac and, later, in San Felipe, before he sacrificed his life at the Alamo.

The colorful James Butler Bonham was 29 years old when he died at the Alamo. Long before he traveled there, he achieved fame as a spirited lawyer in South Carolina. Those who believe that lawyers never act for anything but profit should read the letter to Gen. Sam Houston in which Bonham volunteered his services as a soldier: "Permit me through you to volunteer my services in the present struggle of Texas, without condition, I shall receive nothing, either in the form of services, pay, or land, or rations."

The tradition of lawyers' courage and commitment to society continues in modern times. Disreputable lawyers are justly criticized. The public, as well as the legal profession, is well served by their exposure. But they are only a small part of the story of the legal tradition. That tradition has been built by the men of the Constitutional Convention, our nation's presidents and other leaders, and by the people laboring within the legal profession today. For every charlatan, we can find a dozen honorable lawyers to offset the jokes, the negative reports, and the dishonorable few.

As Americans and Texans, we have only to look back through our own history to find portraits of honorable men and women who have served society as lawyers. We have only to picture the Alamo and then, 46 days later, the Battle of San Jacinto and the commander who led Texas to victory in the war's decisive battle. He was Sam Houston, a courageous man, a hero committed to building a strong and free society, a capable leader. But first, he was a lawyer.

Eugene A. Cook was a justice on the Supreme Court of Texas from 1988 to 1993.

McCORKLE: *Understanding Our Calling*

Two decades ago, we were engaged in intense professional debate and self-reflection about just how lawyers could properly pursue justice and the best interests of their clients by means considered by many to be unjust, unfair, unreasonable, or uncivil. It was a time when poor and sometimes malicious conduct by one attorney frequently prompted rationalization and relativism to justify equally repellant reprisals by another. Worse, perhaps, was the troubling perspective that a behavior was acceptable "because everyone is doing it." During this time, there was much discussion about the erosion of public trust and confidence in the courts and the legal profession, and passionate discourse about what exactly constituted appropriate professional behavior. From this process of self-scrutiny came the Creed of Professionalism.

Our bench and bar were fortunate to have the leadership skills of Texas Supreme Court Justice Eugene A. Cook as chair of the Supreme Court committee dedicated to the task of facilitating the spirited exchange of ideas from representatives of all facets of our profession. As a member of the Drafting Subcommittee, I remember researching lawyer licenses, oaths, and codes of conduct in use across the country, as well as professional codes of conduct found in historical writings. For me, this broad view revealed fundamental and ageless truths about what it means to be called to a profession. The Drafting Subcommittee's discussions were wide-ranging, historical, philosophical, pragmatic, and lively.

The full committee, as well as the entire Texas Supreme Court and Court of Criminal Appeals, considered the Drafting Subcommittee's working draft. Throughout that review process, there was surprisingly little editorial change. The almost immediate consensus reached may have been attributable to the balance of the committee. More likely, however, was that the Creed gave voice to the cornerstones and timeless principles of justice and fairness of our profession. It articulated those principles in the context of contemporary practice.

The result of this collaborative effort was a unique creed. In my view, it is especially noteworthy for four aspects. The Creed of Professionalism was the first creed that:

1. Called upon attorneys to review the intent and terms of the creed with those they would represent. Each attorney proactively become an educator of all those unfamiliar with our duties and obligations as well as concepts of justice and of appropriate acts of professionalism;
2. Mixed the cornerstone principles of justice with specific acts and with the use of "I," thereby encouraging a personal commitment by the reader;
3. Was aspirational in concept, simply crafted, and, unlike many codes, its design allowed it to serve as a simple, reflective reminder acting much as a written mentor on appropriate goals for our profession;
4. Recognized specific acts as absolute standards of accepted practice, thereby serving as a compass for those seeking guidance.

I share the view that the Creed continues to require support from the bench and bar to reinforce professionalism, especially in our present age of constant and rapid technological change. I also believe it has had a positive impact on trial practice. One example is the demise of the "My client made me do it" excuse and its progeny.

The contributions of so many in service to the law, most of whose names have been lost through time, should inspire us, reminding us of their past sacrifices and our obligations to all those we now serve. U.S. District Judge Norman Black, a thoughtful and gentle voice in our drafting conversations, is no longer with us and may now be considered among those great judges and lawyers who have given us our legacy. Today he might remind us that justice is more than sentiment and that we are a link in history, preserving the past while encouraging the next generation. I am grateful for the opportunity to have participated in giving voice to something larger than any one individual.

Judges and lawyers have been my heroes as they struggle daily to do the right thing. Whatever we do in service, whether the task is humble or great, we should understand our calling and rededicate ourselves to our profession through application of the principles found in our Creed.

Lamar McCorkle was a Harris County district judge from 1986 to 2008.

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.

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.

Lawyer to Client

A lawyer owes to a client allegiance, learning, skill, and industry. A lawyer shall employ all appropriate 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.

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.

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 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 canceled.

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.

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.

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 the 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.