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Alia Adkins-Derrick

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Thomas Goode Jones

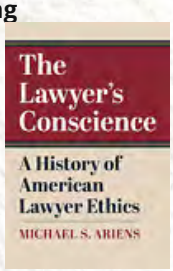
Many lawyers know of Thomas Goode Jones' status as one of the fathers of modern legal ethics. However, few know the details of how that came about.

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Book Review – *The Lawyer's Conscience: A History of American Lawyer Ethics*

By Hon. John G. Browning



Michael Ariens gives us not a dry recitation of historical facts but an enthralling look at the history of how lawyers have imagined themselves and the true nature of their vocation.

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News & Announcements

Celebrating 150 Years of the Texas Constitution: 31st Annual John Hemphill Dinner

By Rachel H. Stinson
Photos by Mark Matson



Four Seasons Hotel

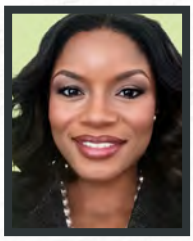
The Society held its 31st Annual Hemphill Dinner on September 10, 2026, at the Four Seasons Hotel in Austin. The evening celebrated the 150th anniversary of the Texas Constitution and honored members of the judiciary.

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Membership & More

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Join the Society





Alia Adkins-Derrick

Message from the *President*

Remember the Noble Lawyer? Espousing nobility and centering legal ethics at the forefront of our respective practices and judicial roles, helps each of us fulfill our roles as legal advocates and arbiters of justice. The reason is simple: legal ethics and nobility, or the lack thereof, directly impacts the public's view of, and faith in, the fair application of the law. Its mere presence has the power to strengthen public trust in judges, attorneys, and the legal community's protection of, and unwavering commitment to, truth, fairness, the rule of law, and justice for all.

Since at least 1989, legal ethics has been and continues to be the standard not the exception for Texas attorneys and the judiciary. It is a fact so embedded within the fabric of the modern Texas legal system that maintaining one's Texas law license to practice law in this state depends on it. Every person, whether newly licensed after passing the Texas Bar or a seasoned out of state attorney wishing to practice law in Texas via admission without examination, must complete the four-hour Justice James A. Baker Guide to Ethics and Professionalism in Texas. No one can be licensed to practice in Texas without completing this postlicensure requirement. There are no exemptions, no course substitutions, and no remedy for the failure to complete the course and no relief for the resulting suspended license and/or late fees ***except*** the course's completion.

Indeed, soon after I first became licensed as a Texas lawyer, I and every other newly licensed Texas attorney were required to take Texas' legal ethics course. I still vividly remember one of the course's central themes: "The Noble Lawyer." This central theme of nobility was so inspiring, impactful, and indelibly important to the continued success of our Texas and American legal systems, that it shaped my sense of duty as a lawyer, guided my legal practice, and has stuck with me decades later.

Given the significance and long-lasting impact of Texas' nobility and ethics course on the way I, and many other Texas attorneys, choose to practice law, I am super excited about our Fall 2026 issue's special focus on the history of ethics, nobility, and civility efforts in Texas and in the US.

In this Fall issue, readers will encounter former Texas Fifth District Court of Appeals Justice Douglas S. Lang's scholarly article "*The Texas Lawyer's Creed and Dondi*: *Their History, Implementation,*

and the Future" that examines the November 7, 1989 adoption of the Texas Lawyer's Creed ("Creed") that made Texas the first state in the nation whose highest courts —the Texas Supreme Court and the Texas Court of Criminal Appeals— adopted a statewide code of professionalism, that established a landmark standard for civility, courtesy, candor, and cooperation among lawyers. Born from the Dallas Bar Association's 1987 efforts to combat abusive litigation tactics and elevate the legal profession and the subsequent US Northern District Court's 1988 *Dondi* opinion that adopted it, the Creed quickly inspired bar associations and courts across the country to follow suit. The article explores the Creed's and the *Dondi* case's origins, enduring influence, and renewed relevance in 2026, emphasizing how its core values of honesty, integrity, fairness, and civility still remain essential to the legal profession and society at large to this day.

Next is Fred Hagan's "*The Texas Lawyer's Creed—A Mandate for Professionalism*" article that sheds light on former Texas Supreme Court Justice Eugene Cook's key role in expanding the reach of the Creed to all Texas attorneys. Hagan's article masterfully explores Justice Cook's deep belief that, through the Creed, the Texas Bar could, in fact, *"defeat Rambo [legal tactics], restore public confidence in our profession, have fun practicing law, [while still] faithfully serv[ing] our clients, and fulfil[ling] our responsibility to the legal system."*

Kevin Dubose and Skip Watson's "*The History, Philosophy, and Significance of the Texas Standards for Appellate Conduct*" article on the creation and history of the Texas Standards for Appellate Conduct ("Standards") looks back at how nearly a decade after the promulgation of the Texas Lawyers' Creed for trial lawyers, each of their work alongside the contributions of other Texas attorneys and jurists forged the path for Texas legal profession to once again serve as a national trailblazer in promoting (& maintaining) civility—this time in appellate practice in the 1990s. Interestingly, in contrast to the 1980s trial bar's widespread unprofessionalism and Rambo tactics that desperately needed the Texas Lawyers Creed, the *Standards* were intended to be a recognition of the culture of civility that already had developed in the appellate bar in Texas. In 1995, Kevin Dubose, then Chair of the State Bar of Texas Appellate Practice and Advocacy Section, initiated the effort by appointing an "Appellate Lawyers' Creed Committee" on which Skip Watson served as the Committee Chair. Drawing on the committee's work and input from attorneys across the state, the Texas Standards for Appellate Conduct emerged. Thanks to both men's efforts, on February 1, 1999, the Texas Supreme Court and the Texas Court of Criminal Appeals jointly promulgated the Standards, making Texas the first state in the nation to adopt ethical guidelines specifically addressing conduct in appellate courts.

In his article, "*The Texas Center for Legal Ethics: Promoting Ethics and Professionalism for Over 35 Years*," Brad Johnson dives deeper into the pivotal and defining moment of 1989, a watershed year for legal ethics and professionalism in Texas. Not only did that year boast of the state's highest courts adoption of the Texas Lawyers' Creed and Texas lawyers' approval of the Texas Disciplinary Rules of Professional Conduct but 1989 also marked the creation of the Texas Center for Legal Ethics and Professionalism (now the Texas Center for Legal Ethics). The Texas Center for Legal Ethics is a permanent organization dedicated to legal ethics and professionalism in the practice of law in this great state of Texas.

Finally, but certainly not least, former Texas Fifth District Court of Appeals Justice John G.

Browning's article, "*Thomas Goode Jones and the Adoption of the First True Code of Ethics*" explores the impact of Thomas Goode Jones on modern legal ethics in the US. The article thoughtfully traces Jones' likely influences and pivotal role in developing the Alabama Code of Ethics, which would later serve as the foundation for the American Bar Association's (ABA) first Canons of Ethics in 1908. The parallels between the two documents are perhaps unsurprising, given Jones' service as one of the fourteen members of the ABA committee charged with evaluating the feasibility of—and ultimately drafting—a code of ethics for the American bar. What is surprisingly remarkable, however, is the fact that neither the Alabama Code nor the ABA Canons that followed provided formal enforcement mechanisms. Instead, both relied on a powerful, if less tangible, force — namely, each lawyer's concern for, and desire to preserve, his or her professional reputation. This reliance on individual conscience and professional standing that Justice Browning's article highlights underscores a foundational principle of legal ethics—that the integrity of the profession depends not only on written standards, but also on lawyers' commitment to uphold them.

I hope you enjoy this issue and its outstanding collection of articles as much as I did!

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Executive Director's Page



Sharon Sandle

The Same Oath, *Many Voices*

"I do solemnly swear that I will support the constitutions of the United States and of this State; that I will honestly demean myself in the practice of law; that I will discharge my duty to my client to the best of my ability; and that I will conduct myself with integrity and civility in dealing and communicating with the court and all parties."

— Texas Government Code § 82.037

I took my oath as a Texas lawyer more than thirty years ago at the State Bar's new lawyer induction ceremony in Austin. There is something moving about standing in a room full of new lawyers and speaking those words together, making a formal, collective promise. The ceremony is humbling but attending the formal induction ceremony is not required. A mentor of mine missed that ceremony. He had already started with a law firm by the time it was held, so a local judge administered the oath to him instead. His signed oath was written out by hand on a scrap of paper and pasted to the back of his law license. The handwritten oath had the same legal effect as the more official, more elegant version pasted to the back of my license. And the unusual circumstances may have given it even more weight; my mentor was one of the most ethical lawyers I've known, and he told that story often.

What strikes me about the Texas lawyers' oath is that it is about honesty and integrity. It is about character. And yet the history of the legal profession is, in part, a history of discovering that character alone is not enough. Not because lawyers are uniquely flawed but because the pressures of practice are real. Competitive clients, messy problems, complicated circumstances, financial incentives, and the ever-present pressure of time erode even genuine good intentions. Under the pressure of everyday concerns, lawyers' responsibility to protect the rights of citizens often gets lost. It's no wonder, then, that lawyers' obligation to their profession and to the public demands more than a promise made once at the beginning of a career.

The story of the first formal code of legal ethics in the United States begins in Alabama in 1887. Thomas Goode Jones was many things: a Confederate veteran who legend says carried one of the white flags at Appomattox, a governor of Alabama, and a federal judge appointed by Theodore Roosevelt. He was also the author of the fifty-six provisions that became the first formal code of legal ethics in the United States. Jones had proposed the work as early as 1881, noting that many ethical lapses were "thoughtless rather than willful." What they needed, he argued, was "some short, concise Code of Legal Ethics, stamped with the approval of the Bar," close at hand. When the ABA adopted its first Canons of Ethics in 1908, virtually all thirty-two of them derived from one of Jones's fifty-six provisions. As Hon. John G. Browning writes in this issue, the debt owed to Judge Jones is an incalculable one.

A century later, Texas added its own chapter. In 1989, amid concerns that unprofessional conduct had "reached epidemic stage," the Texas Supreme Court and the Court of Criminal Appeals jointly adopted the Texas Lawyer's Creed: A Mandate for Professionalism. Texas became the first state in the union where the highest court adopted a statewide code of professionalism.

In January, four newly elected justices will join the Texas Supreme Court. All are women, a historic transformation of the court and a milestone that this Society, devoted to recording the legal history of Texas, should not let pass without acknowledgment. They have taken the same oath that I took as a new Texas lawyer; and they will take another oath when they join Texas's highest civil court. They will also inherit the covenant that Thomas Goode Jones labored over for six years, and the lawyers' creed that Justice Eugene Cook's committee crafted in response to a profession losing its way.

The Texas Supreme Court Historical Society exists, in part, to hold these threads together. To remember that the oath taken in a crowded room in Austin and the oath written by hand in a local courthouse are the same oath and that the Alabama Code of 1887 and the Texas Lawyer's Creed of 1989 are links in the same chain. Recording firsts is part of our work. So is understanding what a first means: not just a departure, but a renewal of a covenant received and carried forward.

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Fellows Column

By Warren W. Harris, Chair of the Fellows



The Fellows Program is celebrating its fifteenth anniversary during the Society's 2026-27 fiscal year. It is a significant milestone, representing a decade and a half of support for projects that have served the Society's educational mission in a variety of important ways. I highlight these projects below.

Taming Texas Judicial Civics and Court History Classroom Project: In Spring 2016, the Fellows launched an innovative judicial civics program that sent attorneys and judges to seventh-grade classrooms to teach an innovative curriculum on the history and workings of the Texas court system. Since then, the program has reached over 26,000 students, primarily through our partnership with the Houston Bar Association. We are working on an expansion in Austin, Dallas, and San Antonio schools.

Taming Texas Book Series: The Fellows have sponsored an illustrated legal history book series as part of the course materials for the judicial civics project. Coauthored by Jim Haley and Marilyn Duncan, the series includes four books: *Taming Texas: How Law and Order Came to the Lone Star State* (2016); *Law on the Texas Frontier* (2018); *The Chief Justices of Texas* (2020); and *Women in Texas Law* (2023). Copies of the hardback books are donated to the classrooms that participate in the judicial civics program. You can download a free copy of the books at www.tamingtexas.org.

Fellows Dinners: One of the benefits of being a Fellow is our exclusive event, the annual Fellows Dinner. Each year since 2013, the Fellows gather with the Justices of the Texas Supreme Court for a collegial dinner. We always choose a unique Austin venue, and the locations for past dinners have included the Blanton Museum of Art, the Texas Lieutenant Governor's private dining room in the State Capitol, the Bullock Texas State History Museum, the Frank Denius Family University of Texas Athletics Hall of Fame, the University of Texas System's Bauer House, the Lyndon Baines Johnson Presidential Library, the Harry Ransom Center, and most recently *onstage* at the Zach Theater. The attendees always comment on the dinner's elegance, uniqueness, and fellowship.

Landmark Court Case Reenactments: An early project of the Fellows was our reenactments of landmark cases. To make our state's legal history come alive, the Fellows sponsored courtroom reenactments of *Texas v. White*, *Johnson v. Darr*, and *Sweatt v. Painter* with noted advocates including Fellows David Beck, Hon. David Keltner, Lynne Liberato, and Hon. Dale Wainwright. The reenactments were well attended by the bar and videotaped for viewing on the Society's Hemphill YouTube Channel.

Archive Support: To supplement the Society's archival holdings, the Fellows purchased an original copy of the seminal *History of the Supreme Court of the State of Texas* (1917) by Harbert Davenport. The historic book was presented to the Court in 2013 at the inaugural Fellows Dinner.

As you see from these projects, the Fellows undertake new projects to educate the bar and the public on the third branch of government and the history of our Supreme Court. The Fellows are also a critical part of the annual fundraising by the Society. If you are not currently a Fellow, please consider joining the Fellows and helping us with this important work.

We are also pleased to welcome our newest Fellow, Tracy Temple, who recently joined as a Greenhill Fellow. We are excited to have her join us as a Fellow and appreciate her generous support of our group. If you would like more information or want to join the Fellows, please contact the Society office or me.

FELLOWS OF THE SOCIETY

Hemphill Fellows

($5,000 or more annually)

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Hon. Jeffrey S. Boyd
David E. Chamberlain
Lauren and Warren W. Harris*
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Marianne M. Auld
Alex Bell
Hon. Jane Bland and Doug Bland
Hon. Christina Bryan and J. Hoke Peacock III
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Hon. John H. Cayce
Randall Chapman
Joshua and Mindy Davidson
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Macey Reasoner Stokes
Tracy C. Temple
Cynthia K. Timms
Hon. Dale Wainwright
Charles R. Watson, Jr.
R. Paul Yetter*

*Charter Fellow

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Editor-in-Chief's Column



Hon. John G. Browning

The Importance of *Civility*

The importance of civility in our profession has been a concept I've held near and dear since my earliest days as a lawyer. I was licensed in 1989, and thanks to a mentor, Kent Adams, this newly minted attorney found himself appointed to the TYLA's Professionalism Committee. My humble contributions largely consisted of writing a brief humor article for the *Texas Bar Journal* ("Top Ten Ways to Spot a Rambo Litigator") and organizing a CLE program at St. Mary's University School of Law on civility and professionalism that featured the late, great Justice Eugene Cook—godfather of the newly-enacted Texas Lawyer's Creed. In the thirty-seven years of practice that followed, I did my best to help restore the "civil" to civil litigation.

For me personally, it was a natural extension of one of the guiding tenets of my Christian faith: treat others as you wish to be treated yourself. While we earn our living in an adversarial system of justice, we can disagree without being disagreeable. I was glad when an opposing counsel or even judge would remark that I "didn't act like a Dallas lawyer" or a "big firm" lawyer. I have always loved being a member of an Inn of Court, since our American Inns of Court were founded with the goal of fostering civility and professionalism in the legal profession. And I was inspired by shining examples like U.S. Supreme Court Justices Antonin Scalia and Ruth Bader Ginsburg. The two iconic jurists were famously on opposite ends of the political spectrum and yet were close friends.

I always felt there was no shortage of reasons for civility, both pragmatic and idealistic. I realized that litigation is expensive enough without incivility increasing its costs. I also knew that today's adversary might be tomorrow's colleague or referral source. Also, I was aware that lawyers already experience ridiculously high levels of stress, anxiety, and alcohol and substance abuse—so why increase such stress by being uncivil and tolerating such behavior in others. Of course, there are also less personal, "big picture" reasons for civility. Our obligations are owed to our clients, and their interests are not served by lawyers being antagonistic and uncooperative. Similarly, with lawyers' reputations among the general public already suffering, why risk damaging that collective reputation further with uncivil behavior?

Since the earliest days of our profession, lawyers have always struggled with popular perception. As the eminent legal historian Lawrence M. Friedman has observed of the early years

of the republic, "it was a common lay opinion that the law was all tricks and technicalities, run by unscrupulous men who built legal careers upon 'the ruins of the distressed.'"[1] To counter this, American lawyers in the early nineteenth century asserted that gentlemanly ideals of "honor" kept them from abusing clients or the public interest. Gradually, talk of "honor" gave way to the more Protestant notion of individual "conscience" as a restraint on self-serving conduct and bad behavior. But as legal historian Michael Ariens has pointed out, lawyers still lacked meaningful ethical guidance, and the threat of disbarment was a hollow one, since "neither the judiciary nor practicing lawyers showed much interest in disbarring venal lawyers to protect either the public or the profession's claim to integrity during this time."[2] With critiques of lawyers intensifying in the nineteenth century, attorneys eventually embraced the need for a code of legal ethics. As my article on the architect of this groundbreaking Code of Legal Ethics, Thomas Goode Jones, discusses, this 1887 code was a "self-consciously reformist document intended to promote courtroom decorum, personal integrity, observance of due process, and professional concern for the defenseless and oppressed."[3]

Since the ABA's adoption of Jones' work in Alabama as a national code of legal ethics in the early twentieth century, there have been multiple efforts to refine the guidelines governing lawyerly behavior. As the articles in this special issue about the history of efforts to address civility in the Texas legal profession reflect, they began to gain steam in the 1980s among mounting concerns about "Rambo litigation." We are honored to publish former Justice Douglas Lang's article on the *Dondi* decision and the genesis of the Texas Lawyer's Creed, which traces the Creed's origins back to the Dallas Bar Association's adoption of its own Creed and Guidelines of Professional Courtesy in 1987. We are also proud to feature Fred Hagan's closer look at Justice Eugene Cook's vision in bringing the Texas Lawyer's Creed to fruition, and we are indebted to past Society President Warren Harris for his efforts to secure Hagan's article. Adding to our treasure trove of salutes to Texas civility efforts is Kevin Dubose's and Skip Watson's detailed study of how the Texas Standards for Appellate Conduct came about. Both of those preeminent appellate lawyers were instrumental in the creation of these Standards, and their narrative reflects the insights of two lawyers who literally were "in the room where it happened." In addition, our special issue includes a look at the history of the Texas Center for Legal Ethics, as told by none other than the Center's director, Brad Johnson. And of course, we are also happy to include my look at Thomas Goode Jones and the roots of what became America's first Canons of Legal Ethics (and eventually, our Model Rules of Professional Conduct).

Finally, I have a confession to make. While my modest efforts as a young lawyer to foster civility bore some fruit (I've gone on to write a book and numerous articles on legal ethics, and I teach Professional Responsibility as a law professor), the scale of a project like this special issue on civility had proven elusive until now. Civility matters and in our profession it always will. Thank you to all our distinguished authors for their wonderful contributions to an issue that centers on efforts to make the practice of law in Texas more civil. We hope you enjoy it.

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1 Lawrence M. Friedman, *A History of American Law*, 2nd Ed. (New York: Simon & Schuster, 1985), 303–4.

2 Michael S. Ariens, *The Lawyer's Conscience: A History of American Lawyer Ethics*, (2023), 29.

3 Paul M. Pruitt, Jr., "Thomas Goode Jones, 1844–1914," in *Gilded Age Legal Ethics: Essays on Thomas Goode Jones' 1887 Code and the Regulation of the Profession*, ed. by Carol Rice Andrews, Paul M. Pruitt, Jr., and David I. Durham [Tuscaloosa: University of Alabama School of Law, 2003] 14.

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The Texas Lawyer's Creed and *Dondi*

• Their History, Implementation, and the Future •

By Hon. Douglas S. Lang

I. The Texas Lawyer's Creed - Its Genesis and Status.

The Texas Lawyer's Creed has served as the gold standard for professionalism and civility in Texas since its adoption by order of the Texas Supreme Court and the Texas Court of Criminal Appeals on November 7, 1989.[1] The United States Court of Appeals for the Fifth Circuit, in *Clapper v. American Realty Investors, Inc.*, recently reaffirmed its commendation of the Creed and Texas's efforts "to instill a greater sense of professionalism among attorneys."[2] That Court recalled the Creed was promulgated to "eradicate 'abusive tactics' that had become 'a disservice to our citizens, harmful to clients, and demeaning to our profession.'"[3]

The Fifth Circuit also described the mandates of the Creed as follows: "The Creed demands courtesy, candor, and cooperation in all lawyer-to-lawyer dealings and prohibits unprofessional conduct in retaliation for other unprofessional conduct."[4]

The genesis of the Creed goes back to October 15, 1987, when the Dallas Bar Association adopted its own Lawyer's Creed and Guidelines of Professional Courtesy. That Creed was adopted after the Dallas Bar's Professionalism Task Force labored on the project for over a year. The Creed Taskforce was chaired by James H. "Blackie" Holmes, and Al Ellis served as vice chair. Some top leaders in the Dallas Bar ranks served on that task force.[5]



Al Ellis

That Creed became more than a declaration of the Dallas Bar Association when the United States District Court for The Northern District of Texas, en banc, issued its watershed opinion in the now famous *Dondi* opinion.[6] In that opinion, the Court



James "Blackie" Holmes

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1 TEXAS LAWYER'S CREED—A MANDATE FOR PROFESSIONALISM, reprinted in Texas Rules of Court 739 (West 2020).

2 *Clapper v. Am. Realty Invs., Inc.,* 95 F.4th 309, 319 (5th Cir. 2024).

3 *Ibid.*

4 *Ibid. See* Eugene A. Cook, "The Search for Professionalism," *Texas Bar Journal* 52, (1989): 1302, 1303 (reprinting the Texas Lawyer's Creed).

5 See Dallas Bar Association Lawyer's Creed and Guidelines of Professional Courtesy and the committee membership. https://www.dallasbar.org/?pg=LawyersCreedProfessionalCourtesy.

6 *Dondi Properties Corp. v. Commerce Savings & Loan Ass'n*, 121 F.R.D. 284, 287 (N.D. Tex. 1988) (en banc) (per curiam).

adopted the Dallas Bar's Creed as its standard measure of conduct for lawyers appearing before the Court. Soon thereafter, the Houston, San Antonio, Travis County, and Corpus Christi Bar Associations adopted professionalism creeds. Also, the Texas Trial Lawyers Association and the Texas Association of Defense Counsel drafted a joint code of professionalism.[7]

On the heels of the *Dondi* opinion the Texas Supreme Court appointed an Advisory Committee whose work culminated in the adoption of the Texas Lawyer's Creed on November 7, 1989. Texas became the first state in the Union where its highest court adopted a statewide code of professionalism.[8] That trend spread swiftly to bar associations across the country. Further, many courts adopted the standards of the *Dondi* opinion.[9]

After the initial enthusiasm for the *Dondi* opinion and professionalism creeds, the Texas Supreme Court made it clear that the Creed is aspirational and not a set of rules that can be used to initiate litigation.[10] Further, the focus of the Texas Lawyer's Creed as well as the other creeds was the need for "professionalism" in litigation.[11] Yet, in recent years, professionalism has been couched in terms of "civility." To many, those terms may be interchangeable, while others argue civility is a separate concept from legal ethics and professionalism.[12] To others, civility casts a

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7 *See* Cook, "The Search for Professionalism."

8 *Ibid*.

9 United States District Judge Mark Pittman, of the Northern District of Texas recently observed, "[] *Dondi* has been cited more than 1,700 times." *Wissel et al v. Rural Media Group, Inc.*, 793 F.Supp.3d 824 (N.D. Tex.2025). Judge Pittman also cited numerous occasions where courts outside of the Northern District of Texas employed the principles of *Dondi*. "In the decades since its adoption, *Dondi* has also been embraced and utilized by various courts outside the Northern District of Texas. *See, e.g., In re Armstrong*, 487 B.R. 764, 773 (E.D. Tex. 2012) ('The standards of conduct governing conduct in the Eastern District of Texas, set out in Eastern District Local Rule AT–3, are those enumerated in *Dondi Prop. Corp. v. Commerce Sav. & Loan Ass'n*, 121 F.R.D. 284, 286 (N.D. Tex. 1988).'). This includes federal and state courts in other states. *See, e.g., Mississippi Farm Bureau Mut. Ins. Co. v. Parker*, 921 So. 2d 260, 262 (Miss. 2005) ('We quote extensively from *Dondi*.'); *Nazar v. Harbor Freight Tools USA Inc*., No. 2:18-CV-00348-SMJ, 2019 WL 7819658, at *2 (E.D. Wash. Sept. 23, 2019); *Saturn Mgmt. LLC v. GEM-Atreus Advisors, LLC*, 754 F. Supp. 2d 272, 284 n.8 (D. Mass. 2010). Indeed, *Dondi* has even been cited by the *Territorial Court of the Virgin Islands. LPP Mortg. Ltd. v. Quetel*, No. CIV. 4/2003, 2004 WL 3546283, at *6 (Terr. V.I. July 16, 2004)."

10 *PNS Stores, Inc. v. Rivera*, 379 S.W.3d 267 (Tex. 2012). See Texas Disciplinary Rules Professional Conduct preamble ¶ 15, *reprinted in* Tex. Gov't Code Ann., tit. 2, subtit. G, app. A (West 2005). Similarly, the Texas Disciplinary Rules of Professional Conduct do not in themselves create any legal duty nor create a private cause of action Disciplinary Rules Prof'l Conduct preamble ¶ 15, *reprinted in* Tex. Gov't Code Ann., tit. 2, subtit. G, app. A. The rules are helpful guidelines for determining the standards of conduct for lawyers, but do not create a private cause of action. *Jurek v. Kivell*, 2011 WL 1587375 *7 (Tex. App.-Houston [1st Dist.] 2011, no pet.).

11 *See* Cook, "The Search for Professionalism."; ("Those who believe that waging litigation Rambo style is the way to practice law do not represent the majority of our profession; they are a minority who achieve media coverage disproportionate to their numbers. These self-destructive attitudes evoke retaliation from other lawyers, making the problem worse. This type of mentality has the effect of making litigation an end in and of itself, thereby driving the costs of litigation even higher for clients. Their idea of winning at any cost is helping to destroy the civility that existed among lawyers in the daily practice of law. Discovery is now drudgery."); See also, Judge Sidney A. Fitzwater, "Professionalism: Viewing the Justice System as a Macrocosm," *Texas Bar Journal* 53, (1990): 1086 ("Litigation tactics commonly labeled 'Rambo,' 'hardball,' and 'rude' are rejected by the lawyer committed to professional trial advocacy.").

12 For example, David A. Grenardo, "Why Civility?," *University of Toledo Law Review* 57, (2026): 421; David Grenardo, "Civility Rules: Debunking the Major Myths Surrounding Mandatory Civility for Lawyers and Five Mandatory Civility Rules That Will Work," *Georgetown Journal of Legal Ethics* 37, (2024): 167; Justice Douglas S. Lang & Haleigh Jones, "Can Courts Require Civil Conduct?," *St. Mary's Journal on Legal Malpractice & Ethics* 6 (2016): 222.

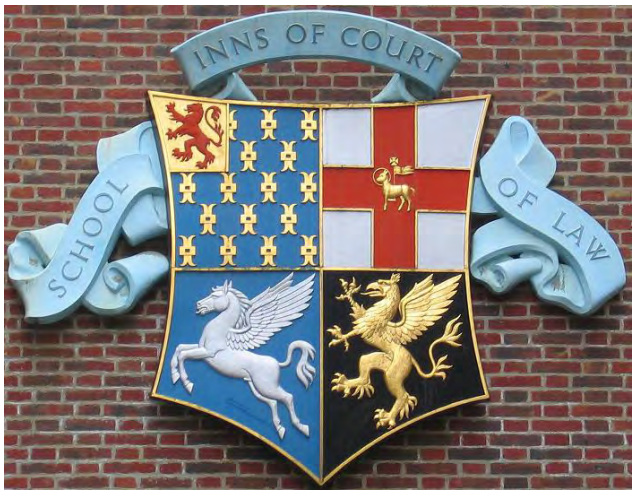
much wider net and captures not only litigation, but to everyday interaction between lawyers, as well as between all people in society.[13]

Now, in 2026, it is time for all lawyers to reacquaint themselves with the tenets of the creeds and recognize the critical importance of the creeds to courts at all levels. Moreover, lawyers also must consider how to incorporate into their practices and lives in general the core values obvious in the creeds; that is, honesty, integrity, fairness, and civility. It is fair to say, the core values of the creeds are viable guidelines for the conduct of all people anywhere.

II. History of Professionalism and Codes.

The roots of modern professionalism extend back at least two millennia to the Roman legal system. Advocates in that system were required to take an "oath of calumny" that obligated them to exhibit proper conduct, integrity, and fair dealing.[14] Beginning in the thirteenth century, English lawyers had obligations similar to those expected of American lawyers today. Fair dealing, competency, loyalty, confidentiality, reasonable fees, and public service all were obligations assumed by English advocates.[15] Those obligations have continued in the modern era through the English Inns of Court.

In nineteenth century, America, David Dudley Field, the author of the *Field Code*, included in his model statute, (adopted by about fifteen states), basic ethical obligations for lawyers.[16] Two law professors, David Hoffman of Maryland and George Sharswood of Pennsylvania, proposed what in effect were codes of lawyer conduct in their treatises. Hoffman referred to his as "resolutions," which urged lawyers to demonstrate loyalty, competency, gentlemanly behavior, civility, and respect.[17] The twentieth century was marked by continued efforts to codify and make mandatory ethical standards which themselves include some elements of professionalism.[18]



Combined arms of the four Inns of Court. Clockwise from top left: Lincoln's Inn, Middle Temple, Gray's Inn, Inner Temple.

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[13] Donald E. Campbell, "Raise Your Right Hand and Swear to Be Civil: Defining Civility as an Obligation of Professional Responsibility," *Gonzaga Law Review* 47 (2011): 99, 107, 109 (civility, legal ethics, and professionalism are distinct concepts).

[14] See generally James A. Brundage, *The Medieval Origins of the Legal Profession: Canonists, Civilians, and Courts* (2008), which discusses the influence of the Roman legal system on medieval lawyers.

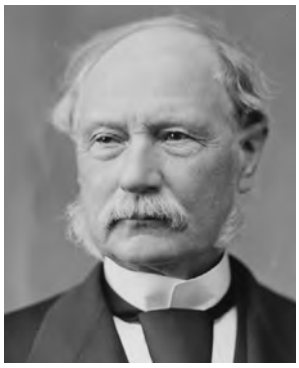
[15] See Carol Rice Andrews, "Standards of Conduct for Lawyers: An 800-Year Evolution," 57 *SMU Law Review* 47, (2004): 1385 for an exhaustive treatment of the historical development of lawyer conduct standards and the significant overlap of medieval English standards and modern lawyer conduct standards.

[16] *Ibid.*, 1425. The Field Code specified duties to maintain confidentiality, to respect courts, not to mislead courts, to do justice, to abstain from offensive personality, to not unduly prejudice parties or witnesses, to not incite passion or greed in litigation, and to take cases on behalf of the poor and oppressed.

[17] *Ibid.*, 1427–28.

[18] Alabama enacted the first state bar code of ethics in 1887. It became a model for several state ethics codes and was the basis for the American Bar Association's 1908 Canons of Ethics. Ethics codes, which do address some aspects of professionalism, are now in force in every state.

Modern efforts to improve the professionalism of lawyers extend back at least five decades. In the 1970's Chief Justice Warren Burger, concerned about the state of the American legal profession, urged organized bars to take steps to increase professionalism and civility.[19] The ABA responded through the Stanley Commission Report, which urged a greater emphasis on lawyers' public obligations to the profession and to society.[20]


David Dudley Field


Cameo of David Hoffman, circa 1835


George Sharswood


Chief Justice Warren Burger

In 2008, the ABA Standing Committee on Professionalism reexamined professionalism and issued its own White Paper.[21] It recommended steps to strengthen professionalism and, in doing so, promoting ". . . the fundamental traditions and core values of the legal profession . . . inculcating and enhancing professionalism among lawyers practicing in the 21st Century."[22]

All these "foundational" reports and White Papers have had the laudatory effect of contributing to broad initiatives from every part of the profession—courts, bars, legal organizations, and law schools—to establish professionalism codes, creeds and oaths, continuing education and legal education programs and, increasingly, mentoring to improve the professionalism of American lawyers. Efforts of the profession to improve the professionalism of American lawyers are national in scope and comprehensive in content. Most state bars, the District of Columbia, scores of local bars, and many federal district courts have adopted professionalism standards.[23] Although they generally cover all aspects of professionalism, civility is the most widely addressed topic. While language varies, most standards, codes, or creeds emphasize the core values of the profession as "'treating others...with courtesy, dignity, and respect,' as well as demonstrating

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[19] "I urge that we never forget the necessity for civility as an indispensable part—the lubricant—that keeps our adversary system functioning. If we want to protect that system we must firmly insist on the lubricant." "Excerpt From the Chief Justice's Speech [to the American Law Institute] on the Need for Civility," *New York Times, May* 18, 1971, https://www.nytimes.com/1971/05/19/archives/excerpts-from-the-chief-justices-speech-on-the-need-for-civility.html).

[20] ". . . In the Spirit of Public Service: A Blueprint for the Rekindling of Lawyer Professionalism (A.B.A. Commission on Professionalism 1986), *available at* https://www.americanbar.org/content/dam/aba/administrative/professional_responsibility/professionalism_migrated/Stanley_Commission_Report.pdf.

[21] Ronald C. Minkoff, Reviving a Tradition of Service: Redefining Lawyer Professionalism in the 21st Century (A.B.A. Standing Committee on Professionalism Report 2008), *available at* https://www.americanbar.org/content/dam/aba/administrative/professional_responsibility/professionalism_migrated/century.pdf.

[22] *Ibid*., 1.

[23] See American Bar Association, Professionalism Codes, (as of March 2017, at least 44 State Bar Associations had professionalism codes) (*Available at* https://www.americanbar.org/groups/professional_responsibility/resources/professionalism/professionalism_codes/.

'cooperation, honesty, and restraint.'"[24]

Many bars have included the concept of civility in their oath of attorney.[25] At least one state, South Carolina, includes civility in its attorney oath, and its Supreme Court has amended the disciplinary rules to identify a violation of the attorney oath as a disciplinary infraction.[26]

III. The Values of Professionalism - What Are They?

A. Conceptualizing Professionalism and Civility.

Much has been written about the Texas Lawyer's Creed, especially regarding its connection to *Dondi*[27] and litigation. Certainly, litigation was the primary focus of the Creeds. However, in 2003, the Dallas Bar Association voted to amend the Creed language of 1987, to include considerations that are not just for trial lawyers. For instance, the very first two clauses of the Dallas Bar Association Lawyer's Creed were modified to ensure its terms apply to any lawyer, not only trial lawyers.[28]

Also, the focus in scholarly writing as well in general parlance has been to couch the concept of "professionalism" in combination with the obligation to conduct oneself civilly.[29] The Conference of Chief Justices suggested civility is a component of the concept of professionalism and states the following:

> "Professionalism is a much broader concept than legal ethics—professionalism includes *not only civility* among members of the bench and bar, but also competency, integrity, respect for the rule of law, participation in pro bono and community service [,] and conduct by members of the legal profession that exceeds the minimum ethical requirements. Ethics are what a lawyer *must* obey. Principles of professionalism are what a lawyer *should* live by in conducting his or her affairs."[30]

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[24] Grenardo, "Why Civility?" 57.

[25] Texas Oath of Attorney, Texas Government Code § 82.037; "*I, _____, do solemnly swear that I will support the Constitutions of the United States, and of this State; that I will honestly demean myself in the practice of law; that I will discharge my duties to my clients to the best of my ability; and, that I will conduct myself with integrity and civility in dealing and communicating with the court and all parties. So help me God.*"

[26] See *In re Anonymous Member of South Carolina Bar*, 392 S.C. 328, 709 S.E.2d 633, 335 (2011) ("Respondent took the lawyer's oath which includes the following clause, 'To opposing parties and their counsel, I pledge fairness, integrity, and civility, not only in court, but also in all written and oral communications.' Rule 402(k), SCACR.").

[27] *E.g.,* Alicia M. Grant, "The Texas Lawyer's Creed: Exploring Its Origin and Impact over the Last Quarter Century," *St. Mary's Journal on Legal Malpractice & Ethics* 6, (2016): 120. https://commons.stmarytx.edu/lmej/vol6/iss1/4)

[28] "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 towards others. *This, I solemnly affirm whether I am engaged in representation of clients in non-litigation or litigation matters*." "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 representation of a client does not mean hitting below the belt." (Emphasis added). (Available at https://www.dallasbar.org/?pg=LawyersCreedProfessionalCourtesy).

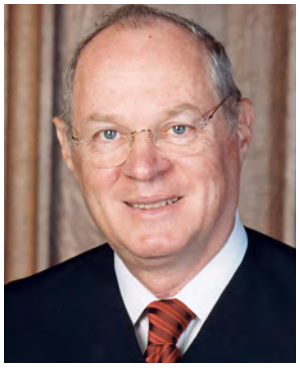
[29] *See* Grenardo, "Why Civility?" 57; David A. Grenardo, "Making Civility Mandatory: Moving from Aspired to Required," *Cardozo Public Law, Policy & Ethics Journal* 11, (2013): 239, 245-47, 290; *cf.* Donald E. Campbell, "Raise Your Right Hand and Swear to Be Civil: Defining Civility as an Obligation of Professional Responsibility," *Gonzaga Law Review* 47, (2011): 99, 107, 109 (civility, legal ethics, and professionalism are distinct concepts).

[30] CONFERENCE OF CHIEF JUSTICES, A NATIONAL ACTION PLAN ON LAWYER CONDUCT AND PROFESSIONALISM 2 (1999), https://ncsc.contentdm.oclc.org/digital/collection/judicial/id/230/.

B. Definitions of Civility Abound.

The Conference's conclusion is helpful, but it does not pinpoint the meaning of civility. Justice Sandra Day O'Connor, always practical, is quoted as saying about civility, "I know it when I see it."[31] That "definition" too, is vague as it relies on the viewpoint of each individual person. A bit more vivid explanation of civility was offered by Justice Anthony Kennedy of the U.S. Supreme Court: civility is simply, "respect." Justice Kennedy explained, "[Civility] is not some bumper-sticker slogan, 'Have you hugged your adversary today?' Civility is the mark of an accomplished and superb professional, but it is even more than this. It is an end in itself. Civility has deep roots in the idea of respect for the individual."[32]


Justice Sandra Day O'Connor


Justice Anthony Kennedy

In contrast, one senior member of the legal academy, Thomas A. Harrell, in a speech he presented in 2008 and published later, concluded the term, "professionalism" or its inverse, unprofessional behavior, connotes more of a "cultural matter."[33] His view is "the mark of a professional is not found in how loud we bray or prance around but how well we attend the business of our clients with diligence, effectiveness and a minimum of cost to them, we ultimately will prevail."[34] Professor Harrell concluded with two insightful statements. First, he said, "in the final analysis about all we can do is to make certain that we ourselves strive to be professionals in the sense that we want others to be."[35] Then, his parting words were, "if you want to be a lawyer - as a lawyer ought to be - then be one."[36]


David Grenardo

Some members of the academy have proffered solid definitions in their scholarly writing. One has been offered by Professor David Grenardo who insightfully defines civility as "'treating others with courtesy, dignity, and respect,' as well as demonstrating 'cooperation, honesty, and restraint.'"[37]

On the other hand, looking at civility from another angle, Judith Fisher identified some types of lawyer conduct found by courts to be uncivil: "hostility, abrasive conduct, and strident personal attacks on

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[31] *See* Sandra Day O'Connor, "Professionalism," *Washington University Law Quarterly* 76, no. 1 (1998): 10 (Employing the famous statement of Justice Potter Stewart, in effect saying he could not define pornography in words, but saying, "I know it when I see it." *Jacobellis v. Ohio*, 378 U.S. 184, 197 (1963)).

[32] Louis H. Pollak, "Professional Attitude," *A.B.A. Journal* 84, (Aug. 1988): 66 (quoting Justice Anthony Kennedy's address to the 1997 ABA Annual Meeting on Aug. 5, 1997).

[33] Thomas A. Harrell, "An Old Curmudgeon Looks at Professionalism or Are We Really Sure We Want To Be Professionals?" *Annual Institute on Mineral Law* 55 (2008): 326, 327 (Available at: https://digitalcommons.law.lsu.edu/mli_proceedings/vol55/iss1/14).

[34] *Ibid.*

[35] *Ibid.*, 338.

[36] *Ibid,*, 339.

[37] David A. Grenardo, "A Lesson in Civility," *Georgetown Journal of Legal Ethics* 32, (2019): 135, 143.

opponents," "overzealous advocacy," "unnecessary combativeness," and "bad manners."[38] Fisher then observed, "The varieties of [uncivil] tactics are limited only by lawyers' imaginations."[39] Finally, Fischer opined that while "it is easy to catalog uncivil conduct, its opposite, civility, is more difficult to pin down."[40] Grenardo and Fisher have provided excellent observations. They cabined the concept of civility in common plain language.


Judith D. Fisher

Personal opinions offer the wisdom of experience. However, a California Court of Appeal captured the actual effect of incivility when it rendered its judgment. That Court said, "Civility is an ethical component of professionalism. Civility is desirable in litigation, not only because it is ethically required for its own sake, but also because it is socially advantageous: it lowers the costs of dispute resolution. The American legal profession exists to help people resolve disputes cheaply, swiftly, fairly, and justly. *Incivility between counsel is sand in the gears."*[41]

C. Can Definitions Change the Incivility Culture?

Every lawyer must consider the core values of civility and the creeds. But to make a difference in the legal system, personal, individual action of each lawyer to be civil is imperative. Each lawyer must recognize the fundamental fact of life that one cannot control the habitual and unrepentantly uncivil people in our society. Each of us must deliberately control our own conduct. Personal self-control is what it will take to bring about uniform civil conduct in the practice of law and the legal system.[42]

IV. The Essence of *Dondi*.

A. *Dondi* - An En Banc Decision That Energized the Cause for Civility.

The *Dondi* decision addresses conduct of counsel in two underlying lawsuits. The first, which the court referred to as *"Dondi Properties,"* was a suit brought to recover damages based upon a long list of claims: civil RICO, common law and statutory fraud, the Texas Fraudulent Transfer Act, federal regulations prohibiting affiliate transactions, civil conspiracy, negligent misrepresentation, and usury. The claims arose in connection with activities related to the failed Vernon Savings and Loan Association. The second underlying lawsuit, referred to by the court as "*Knight*" asserted claims 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

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[38] Judith D. Fischer, "Incivility in Lawyers' Writing: Judicial Handling of Rambo Run Amok," *Washburn Law Review* 51, (2011): 365, 366 (The author lists the type of conduct found to be uncivil by courts including "hostility, abrasive conduct, and strident personal attacks on opponents," "overzealous advocacy," "unnecessary combativeness," and "bad manners." (footnotes omitted)).

[39] *Ibid.*, 366.

[40] *Ibid.*

[41] *Karton v. Ari Design & Construction, Inc.,* (2021), 61 Cal.App.5th 734, 748, 276 Cal.Rptr.3d 46, 56. (emphasis added).

[42] Douglas S. Lang, "A Revolution of Rational Civility-How Virtue and Self-Control Can Revive Civil Behavior," *St. Mary's Journal on Legal Malpractice & Ethics,* Vol 16, Issue 2, (2026): 215.

refusal to pay plaintiff the proceeds of a life insurance policy.[43]

In the *Dondi Properties* action, the defendants filed a motion for sanctions against the plaintiffs for "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."[44] In *Knight,* the plaintiff filed a motion to "strike a reply brief that the defendant filed without leave of court."[45] The plaintiff contended the court should strike the reply brief "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."[46] The plaintiff also requested leave to file an additional response in the event the court did not strike the reply brief.

In response to these two sets of motions and at the request of a member of the court, the U.S. District Court for the Northern District of Texas convened en banc to establish "standards of conduct to be observed in the Northern District of Texas."[47] The Court made it clear in at least four ways that it has the power to control cases on its docket, including the conduct of the lawyers.

First, the Court announced, "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)."[48] Second, The court cited federal statutes for its authority to compel civil conduct: "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 []."[49] Third, the Court said, "we are also granted the authority to punish, as contempt of court, the misbehavior of court officers."[50] Fourth, they affirmed a court has "inherent power to regulate the administration of justice."[51]

Further, the court announced that it would not tolerate uncivil behavior and imposed new standards of conduct for practice in its district: the Dallas Bar Association's Lawyer's Creed and Guidelines of Professional Courtesy.[52] The Dallas Creed and Guidelines—which expressly provide for civil conduct—preceded the Texas Lawyer's Creed and remain part of the fabric of the court's rules of conduct. Finally, the court made it clear:

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[43] *Dondi Properties Corp. v. Commerce Savings & Loan Ass'n*, 121 F.R.D. at 285.

[44] *Ibid*.

[45] *Ibid.*

[46] *Ibid.*, 286.

[47] *Ibid.* Dallas Bar Ass'n, Guidelines for Professional Courtesy (2003), https://www.dallasbar.org/?pg=LawyersCreedProfessionalCourtesy. (¶ 1(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."); THE TEXAS LAWYER'S CREED—A MANDATE FOR PROFESSIONALISM.

[48] *Ibid.*, 287.

[49] *Ibid.* (citing 28 U.S.C. § 1927 (2012)).

[50] *Ibid.* (citing 18 U.S.C. § 401(2012)).

[51] *Ibid.*

[52] *Ibid.*, 287. Dallas Bar Ass'n, Guidelines for Professional Courtesy (2003), (*Available at* https://www.dallasbar.org/?pg=guidelines-professional-courtesy).

> We think the standards we now adopt are a 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.[53]

B. Other Texas Federal Courts Adopt *Dondi.*

Many federal districts in Texas have adopted rules similar to *Dondi*.[54] Additionally, the Fifth Circuit has relied historically upon *Dondi* in recognizing a district court's ability to sanction attorneys for uncivil conduct in accordance with the rules, statutes, and the professionalism creed *Dondi* cites. For example, in the case of *In re Elliott*,[55] the Fifth Circuit upheld a bankruptcy court's imposition of attorney's fees as a sanction against an attorney based upon a finding that the attorney acted solely for the purpose of "harassing opposing parties" and counsel.[56]

In another case, the U.S. District Court for the Southern District of Texas strongly suggested a need for more civility between lawyers, even where there may be no conduct amounting to an ethical violation.[57] The court's written opinion first addresses the issues raised, then pointedly expresses concern about the lack of civility demonstrated by all counsel in the case.[58]

The court observed that in their pleadings and motions, "the parties have often forsaken cogent and well-researched arguments for sarcastic and pejorative insults."[59] Then, the court listed two specific examples of the insults from both sides contained in pleadings, including when one counsel charged opposing counsel with violations of federal criminal statutes that prohibit making false statements to federal courts.[60]

Also, the court noted that in the defendants' pleadings, they "comment on [the appellant's] penchant for filing or threatening to file superfluous motions or pleadings' . . . [and] question the

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[53] *Dondi*, 121 F.R.D. at 288-289.

[54] *See In re Bradley*, 495 B.R. 747, 783 n.22 (Bankr. S.D. Tex. 2013) ("In 2001, the District Judges of the Southern District of Texas voted to adopt these Guidelines for Professional Conduct, to be observed by all attorneys appearing before any district judge, bankruptcy judge, or magistrate judge presiding in the Southern District of Texas. General Order 2001-7. The guidelines are derived from the decision rendered in [bonds]."); *In re Armstrong*, 487 B.R. 764, 773 (ED. Tex. 2012) ("The implication that the Northern District encourages an attorney to advance claims the attorney knows are baseless is especially ironic. The standards of conduct governing conduct in the Eastern District of Texas, set out in Eastern District Local Rule AT-3, are those enumerated in *Dondi*."); *In re Mortg. Analysis Portfolio Strategies, Inc*., 221 B.R. 386, 389 (Bankr. W.D. Tex. 1998) ("Under Local Rule 1001(g) all counsel are to observe the standards of conduct set out in [bonds]."); *see also In re Anonymous Member of the S.C. Bar*, 709 S.E.2d 636, 636-38 (S.C. 2011) (disciplining a lawyer for conduct prejudicial to the administration of justice and violation of the lawyer's oath that includes "civility").

[55] *In re Elliott*, No. 93-1537, 1994 WL 24877 (5th Cir. 1994).

[56] *Ibid.*, *1 (citing *Dondi,* 121 F.R.D. at 287-88).

[57] *See Healix Infusion Therapy, Inc. v. Healix Health, LLC*, No. H-08-0337, 2008 WL 1883546, at *12 (S.D. Tex. Apr. 25, 2008) (reprimanding the parties for their conduct and emphasizing its effect on the court).

[58] *Ibid*.

[59] *Ibid.*

[60] *Ibid*., *12 n.45 (citing 18 U.S.C. §§ 1001, 1623 (2012)).

motives of plaintiff's counsel."[61] Additionally, the parties exchanged offensive e-mails that stated: "[Y]our client has issues with the truth" and "[Y]ou are the obstacle in the case that's keeping it from getting resolved. I'm sure Dr. Murphy appreciates having to pay for your antics."[62] To the court, the e-mails between the parties' counsel were "emblematic of the apparent disdain of both counsel for each other and the court" where they contain accusations of "lacking an intention to comply with the rules and of having a goal to bombard defendants and the court with unfounded motions."[63]

While not finding that either attorney had violated an ethical duty,[64] the court directed "[c]ounsel for all parties . . . to read and reflect on the Creed . . . and conduct themselves accordingly."[65] No sanctions were imposed, but the court attached a copy of the Texas Lawyer's Creed to its opinion, "admonish[ing] the parties and their counsel to treat one another—and thus this court—with higher regard and with more civility and courtesy."[66]

C. The Fifth Circuit Lauds the *Dondi* Decision.

The *Clapper* case, noted above, demonstrates the Fifth Circuit staunchly maintains *Dondi* as the guide for lawyer conduct. In that case, the Court emphatically reaffirmed its intolerance for incivility. In ordering a new trial, the court decried the fact that the lawyers for the party in whose favor the jury found, "employed nearly every category of what we have previously held to be improper closing argument. These improper and highly prejudicial statements, examined in the aggregate and in context, demonstrate the need for a new trial."[67]

The court drew the line between acceptable argument and that demonstrated in the case before them by indicating tolerance for "expressive language and a bit of oratory and hyperbole in arguments." [68]However, in the *Clapper* case, offending counsel committed a litany of errors. Among other things, launching into "a barrage of personal attacks against" opposing counsel, "threw a box of tissues," accused opposing counsel of "hid[ing] evidence," called opposing counsel "an embarrass[ment] for the profession," suggested to the jury the opposing counsel "must think that each juror was 'an idiot,'" and opposing counsel's actions were '"low class,' 'classless,' 'ruthless,' and 'disgusting.'"[69]

The court concluded, the above comments and other similar arguments identified in the opinion, "unquestionably tarnish[ed] the badge of evenhandedness and fairness that normally marks our system of justice."[70] In a parting comment, the court declared, "[Z]ealous advocacy

[61] *Ibid.*

[62] *Ibid.*

[63] *Ibid.*

[64] *See ibid.* (chastising counsel for their sarcastic comments).

[65] *Ibid.*, *12.

[66] *Ibid.*

[67] *Clapper*, 95 F.4th at 316.

[68] *Ibid.,* 314.

[69] *Ibid.*, 315-316.

[70] *Ibid.*, 314.

must not be obtained at the expense of incivility."[71]

There is no question *Dondi* lives in the Fifth Circuit and other federal courts around the nation.[72]

D. Texas State Courts and Civility.

There are several Texas rules and statutes that address the administration of cases and the general conduct of the lawyers. For instance, Texas Government Code Sec. 21.001 provides that court "proceedings be conducted with dignity and in an orderly and expeditious manner and control the proceedings so that justice is done."[73]

Additionally, Texas courts may control proceedings by ruling a lawyer is in contempt of court.[74] In fact, the Texas Supreme Court has held, "Trial courts are empowered to command respect and decorum in courtroom proceedings and may exercise that authority by sanctioning members of the bar who are pugnacious and indecorous."[75]

However, while the "Texas Oath of Attorney," the Creed, and the Texas Disciplinary Rules of Professional Conduct, proclaim core rules and principles, they are not directly applicable to control court proceedings. The Texas "Oath of Attorney" includes an important description of a lawyer's responsibilities,[76] yet, violation of that oath is not a legal basis to impose sanctions or discipline.[77]

Additionally, it is apparent some Texas appellate courts deem the Texas Lawyer's Creed and the *Dondi* case are appropriate and important standards for conduct. Yet, those standards

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[71] *Ibid.*, 319.

[72] *See* n. 9, *supra*. *Wissel v. Rural Media Group, Inc.*, 793 F.Supp.3d 824 (N.D. Tex. 2025).

[73] "Sec. 21.001. INHERENT POWER AND DUTY OF COURTS. (a) A court has all powers necessary for the exercise of its jurisdiction and the enforcement of its lawful orders, including authority to issue the writs and orders necessary or proper in aid of its jurisdiction.
(b) A court shall require that proceedings be conducted with dignity and in an orderly and expeditious manner and control the proceedings so that justice is done."

[74] *See* Tex. Gov. Code §§21.002.

[75] *Brewer v. Lennox Hearth Prods., LLC,* 601 S.W.3d 704, 729 (Tex. 2020) (citing *Chambers v. NASCO, Inc.*, 501 U.S. 32, 43 (1991)); *see also*, *Webster v. Comm'n for Law. Discipline*, 704 S.W.3d 478, 505 (Tex. 2024) ([An] 'appropriate disciplinary authority' is unquestionably the court overseeing the conduct that gave rise to the alleged rule violation. And the court does not have to await the opposing party's call; if it perceives breaches of the rules or other sanctionable conduct, the court is empowered to investigate and impose consequences."). *Webster v. Comm'n for Law. Discipline,* 704 S.W.3d 478, 505 (Tex. 2024).

[76] TEX. GOV'T CODE ANN. § 82.037(a) (West 2015) (the oath requires the lawyer to state he will "honestly demean" himself and he will conduct himself "with integrity and civility in dealing and communicating with the court and all parties").

[77] *Cf.* Unlike Texas, South Carolina and Nevada have adopted rules that support the oath new attorneys are required to take. As a result, violations of the attorney oath, including the clauses in the oaths requiring civility, are violations of the rule, which allows the oath to be enforced and attorneys to be sanctioned when their conduct fails to conform to the standards set forth by the oath. *See In re Anonymous Member of the S.C. Bar*, 709 S.E.2d 636, 636-38 ("To be admitted, the applicant must pay a fee and take and subscribe the following oath or affirmation" and reciting the South Carolina "lawyer's oath." (citing S.C. APP. CT. R. 402(k))); see also NEV. S.C.R. 73 (2014) (stating "[u]pon being admitted, each applicant shall take and subscribe to the following oath" and offering the Nevada "attorney's oath").

are not cited as legal grounds to impose sanctions.[78] In fact, as noted above, in the case of PNS Stores v. Rivera,[79] the Texas Supreme Court made it clear that the Texas Lawyer's Creed is not a basis for a party or a lawyer to seek sanctions.[80] Further, as stated in the order promulgating the Creed, "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." The court also made it clear that although the Creed is "aspirational," the law supports adherence to the principles, and "[c]ompliance with the rules depends primarily upon understanding and voluntary compliance, secondarily upon reinforcement by peer pressure and public opinion, and finally, when necessary, by enforcement by the courts through their inherent powers and rules already in existence."[81]

Similarly, the Texas Disciplinary Rules of Professional Conduct, which set out the minimum level of acceptable ethical conduct for lawyers, address many of the same issues regarding efficient court administration as described in the Creed and *Dondi*. For instance, lawyers are prohibited from causing unreasonable delay in an action or unreasonably increasing costs.[82] However, because those rules are prohibited from use as a basis for civil claims or "procedural weapons," Texas

[78] Some Texas appellate courts refer to the Texas Lawyer's Creed and the *Dondi* case as the appropriate standard for conduct. However, those courts merely warned the parties about their inappropriate conduct. *Interest of T.A.,* 2019 WL 2134630*4, n. 6 (Tex.App.-Fort Worth 2019, no pet.); *In re Cho*, 2017 WL 3911002 *3, n.3 (Tex. App.-Fort Worth 2017, orig. proceeding) (The Court remarked in part, "We are quite disturbed by the vexatious and belligerent tone present in the parties' multitude of submissions in both this court and the trial court. Such gamesmanship is inappropriate. The parties should have made a better attempt to resolve this matter before involving the trial court or this court." and cited *Dondi*.); *Nguyen v. Nguyen*, 2021 WL 3796082 *5 (Tex. App.-Fort Worth 2021, no pet.) (Court of Appeals remarked that trial court cited *Dondi* as basis for requiring counsel to meet and work out their discovery disputes,); *Rammah v. Abdeljaber*, 235 S.W.3d 269, 272 (Tex. App.-Dallas 2007, no pet.) (Court of Appeals recited the trial court's findings that counsel's "'gratuitous' and 'insulting' comments in its initial motion for sanctions violated the *Dondi* decision and the Texas Lawyer's Creed in multiple respects."); *Bullock v. American Heart Ass'n*, 360 S.W.3d 661, 667 n. 4 (Tex. App.-Dallas 2012, no pet.) (The Court of Appeals expressed concern about a lawyer's conduct citing *Dondi*, "We are deeply troubled by Bullock's unsubstantiated invective suggesting that '[t]he AHA is probably hiding counsel because he gave them advice on how to break the law.' Attorneys owe opposing counsel a duty of courtesy, and should not abuse the opposing party or engage in offensive conduct."); *Nawracaj v. Genesys Software Systems, Inc.*, 524 S.W.3d 746 (Tex. App.-Houston [14th Dist.] 2017, no pet) ("Client sued out of state lawyer. Special appearance of lawyer denied because of affirmation in federal court in Texas through *pro hac* admission that he agreed to be bound by the local rules of the Northern District of Texas and to comply with the standards of practice adopted in as well as the Texas Disciplinary Rules of Professional Conduct.").

[79] *PNS Stores, Inc. v. Rivera*, 379 S.W.3d 267 (Tex. 2012).

[80] *See ibid.*, 276-77 (holding the Creed "does not create new duties and obligations enforceable by the courts").

[81] THE TEXAS LAWYER'S CREED—A MANDATE FOR PROFESSIONALISM; see *Armadillo Bail Bonds v. State*, 802 S.W.2d 237, 239-40 (Tex. Crim. App. 1990) (en banc) (discussing the inherent powers of the court); *Houtex Ready Mix Concrete & Materials v, Eagle Constr. & Envtl. Servs., LP*, 226 S.W.3d 514, 524 (Tex. App.—Houston [1st Dist.] 2006, no pet.) ("Inherent power to sanction exists to the extent necessary to deter, alleviate, and counteract bad faith abuse of the judicial process"); *Kutch v. Del Mar Coll*., 831 S.W.2d 506, 510 (rex. App.—Corpus Christi 1992, no writ) (stating a court's inherent power to impose sanctions is strongest when conduct complained of interferes with "core functions" of the judiciary, i.e., hearing evidence, deciding issues of fact raised by the pleadings, deciding questions of law, rendering final judgment, and enforcing that judgment); see also Bill Whitehurst, *A Plaintiff Attorney's Perspective,* 57 TEX. B.J. 1099, 1100 (1994) (referencing a court's inherent powers to enforce the Creed).

[82] "A lawyer shall not bring or defend a proceeding, or assert or controvert an issue therein, unless the lawyer reasonably believes that there is a basis for doing so that is not frivolous." TEX. DISCIPLINARY RULES PROF'L CONDUCT R. 3.01, reprinted in TEX. GOVT CODE ANN., tit. 2, subtit. G, app. A (West 2013) (TEX. STATE BAR. R. art. X, § 9). "[A] lawyer shall not take a position that unreasonably increases the costs or other burdens of the case or unreasonably delays resolution of the matter." *Ibid.* R. 3.02. "[A] lawyer shall not use means that have no substantial purpose other than to embarrass, delay, or burden a third person, or use methods of obtaining evidence that violate the rights of such a person." *Ibid*. R. 4.04.

courts, as with federal courts, do not cite those rules as grounds for sanctions—but, appropriately, cite them only as reference points regarding parameters of lawyer behavior.[83]

V. Surveys Provide Insight into Professional Incivility - Just How Bad or Good Is Lawyer Conduct?

Case law highlights anecdotal instances where courts were compelled to address improper lawyer conduct. Those court decisions demonstrate the tolerance of judges for assorted lawyer conduct. However, some legal profession surveys have gathered data from a representative sample of lawyers regarding their experiences as to lawyer conduct. Those results typically advise about real life, lawyer to lawyer interaction.

For instance, the Illinois Commission on Professionalism[84] has published results of several surveys to which Illinois lawyers responded. At least two addressed professionalism.[85] One specifically addressed bullying in the legal profession.[86]

The Illinois Commission's 2021 survey found that "Most respondents (86 percent) tend to take the high road when confronted with incivility, opting to ignore or address the behavior in a civil way. The chances of a civil response increase with age."[87] However, 54 percent of the respondents said they had experienced uncivil or unprofessional behavior from another lawyer in the six months prior to responding to the survey.[88]

According to respondents, "uncivil or unprofessional behavior harms public/client confidence in the profession (90 percent), makes it more difficult to resolve a matter (95 percent), makes the practice of law less satisfying (92 percent), and leads to an increase in litigation/transaction costs (88 percent)."[89]

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[83] TEX. DISCIPLINARY RULES PROF'L CONDUCT pmbl. ¶ 15. Disciplinary rules are routinely cited by courts as the guidelines for behavior, not for sanctions. *See Twist v. McAllen Nat'l Bank,* 248 S.W.3d 351, 364-68 (Tex. App.—Corpus Christi 2007, no pet.) (concluding the Texas Disciplinary Rules of Professional Conduct may be taken into account when determining sanctions).

[84] The Commission was established in 2005 under the authority of the Illinois Supreme Court, is governed by Illinois Supreme Court Rule 799. "Rule 799 charges the Commission with promoting among the lawyers and judges of Illinois principles of integrity, professionalism, and civility; fostering commitment to the elimination of bias and divisiveness within the legal and judicial systems; and ensuring that those systems provide equitable, effective, and efficient resolution of problems and disputes for the people of Illinois." (Available at https://www.2civility.org/about/).

[85] Illinois Commission on Professionalism, "Today's Lawyers Are More Civil, But Not to Everyone, Commission Survey Says," 2Civility, December 9, 2021, (Available at https://www.2civility.org/todays-lawyers-are-more-civil-but-not-to-everyone-commission-survey-says/).

[86] Stephanie A. Scharf & Roberta D. Liebenberg, *Bullying in the Legal Profession: A Study of Illinois Lawyers' Experiences and Recommendations for Change*, Illinois Supreme Court Commission on Professionalism (2024).(Available at https://civility.wpenginepowered.com/wp-content/uploads/2024/10/2Civility_BullyingReport_Full_FN.pdf).

[87] *Survey on Professionalism-A Study of Illinois Lawyers* 2021 (Available at https://civility.wpenginepowered.com/wp-content/uploads/2021/12/ILSCCP-Civility-Survey-Report-2021.pdf)).

[88] *Ibid.*

[89] Illinois Commission on Professionalism, "Today's Lawyers Are More Civil, But Not to Everyone, Commission Survey Says," 2Civility, December 9, 2021, (Available at https://www.2civility.org/todays-lawyers-are-more-civil-but-not-to-everyone-commission-survey-says/).

Bullying was defined by the Commission's 2024 survey on bullying "as inappropriate behavior intended to intimidate, humiliate, or control the actions of another person, including verbal, nonverbal, or physical acts."[90] However, bullying is not only uncivil. "Incivility is rude or disrespectful behavior. In contrast, bullying typically involves a power imbalance with intentional and often unrelenting aggression, intimidation, or humiliation. Bullying can target a person's gender, sexual orientation, race, or other personal characteristics. Gender-based bullying, for example, may take the form of sexual harassment, but bullying behaviors overall are much broader, and a bullying victim lacks formal legal mechanisms for redress like those available for sexual harassment victims."[91]

The survey addressed more than the opposing lawyer in a practice setting. It found that "33% of lawyers identified the bully as a lawyer external to their organization • 31% of lawyers identified the bully as a lawyer within their organization who was in a more senior or high-level position • 14% of lawyers said they were most recently bullied by a judge."[92] The effects of bullying were reported to be emotional as well as physical; "54% of those bullied experienced a negative change in emotional well-being (such as anxiety, loss of self-confidence, and other negative feelings and reactions) • 39% of those bullied felt less productive at work • 20% of those bullied experienced a decline in physical health • 18% of lawyers said they had left a job practicing law because of bullying."[93]

The bullying survey made significant recommendations: (1) legal workplaces should develop, implement, and enforce anti-bullying policies; (2) legal workplaces should conduct training specific to their organization's anti-bullying policies and procedures to equip lawyers with tools to respond, whether they are being targeted by bullying or witnessing it; (3) legal workplaces should conduct training specific to their organization's anti-bullying policies and procedures to equip lawyers with tools to respond, whether they are being targeted by bullying or witnessing it; (4) bar associations should use their resources and reach to advance programs that educate members on the prevalence and impact of bullying in the legal profession; (5) lawyers being bullied should respond in the way they feel best safeguards their rights, well-being, and career.[94]

Survey results like those described above are interesting, but are most useful if they are applied to make a difference. Perhaps a difference can be made in the profession if law students and beginning lawyers are instructed and mentored about the real-life experiences of the lawyers who were surveyed.

VI. The Future of the Civility Movement.

A. Personal Responsibility.

The cry for civility is not new. Many have spoken and written about the ills of incivility in the legal profession and society. Yet, the sour taste of incivility persists. Although we do not have to be

[90] *Survey on Professionalism-A Study of Illinois Lawyers* 2021, (Available at https://civility.wpenginepowered.com/wp-content/uploads/2021/12/ILSCCP-Civility-Survey-Report-2021.pdf).

[91] *Ibid*.

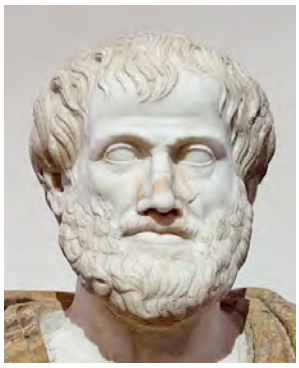
[92] *Ibid.*

[93] *Ibid.*

[94] *Ibid.*

friends with others to demonstrate civility, the components of Aristotle's concept are significant.

To Aristotle, civility is comprised of tactful communication along with consideration and respect for others that balances against self-directed, even selfish, thinking.[95] Civility is not just about being nice, and it does not mean we must each acquiesce to the wrath of uncivil people. We must defend ourselves. However, even when we disagree with a position, we must respect the right of another to take a contrary position. This course of conduct, taking action that is intended to cultivate civility in the face of disagreement, is what Aristotle would categorize as courageous.[96] It is courage that stimulates one to exercise self-control. Self-control directs civil conduct.


A Roman copy of a Greek bust of Aristotle

As protectors of the Rule of Law, officers of the court and representatives of the legal system, and oftentimes leaders on a local, state, and national level, lawyers should serve as the primary exemplars of how to conduct oneself civilly, particularly in a profession that is inherently adversarial. If lawyers can make progress to demonstrate and promote self-control as a means to increase civility and overcome incivility, then the rest of society may more readily follow the course of civility.

Yet, just what is "it" that can turn the tide. The tide will turn when each individual looks inward at oneself. Members of the profession cannot simply point the finger of responsibility at "the other guy." No one can control the other guy unless the party in control is a judge who holds a lawyer responsible for being "sand in the gears of Justice."[97] What about when no judge is around to keep the peace? Again, the responsibility lands heavily and firmly in each of our own laps. Atticus Finch, the central figure in the classic novel *To Kill a Mockingbird*, identified self-control as the best armor for attacks of incivility when he advised his daughter, not to "let 'em get your goat."[98]

B. Steps to Improve the Culture of the Profession.

There are some steps that the Texas Bar and Judiciary should consider to promote civil conduct. Contemplate these:

1. Application for Membership in the Bar.

Applicants for the Texas Bar must pledge to conduct themselves in accordance with the Texas Lawyer's Creed. When application is made for admission to the Texas Bar, each applicant

[95] *See* Megan Laverty, "Civility, Tact, and the Joy of Communication," *Philosophy of Education* 65, (2009): 228, 235.

[96] *See* III Aristotle, *Nicomachean Ethics* 7 (W.D. Ross trans., Batoche Books, 1999).
"The man, then, who faces and who fears the right things and from the right motive, in the right way and from the right time, and who feels confidence under the corresponding conditions, is brave; for the brave man feels and acts according to the merits of the case and in whatever way the rule directs. . .. But courage is noble. Therefore, the end also is noble; for each thing is defined by its end. Therefore it is for a noble end that the brave man endures and acts as courage directs."

[97] *See Karton v. Ari Design & Construction, Inc.,* (2021), 61 Cal.App.5th 734, 748, 276 Cal.Rptr.3d 46, 56.

[98] *See* Harper Lee, *To Kill a Mockingbird* 82–85 (McIntosh and Otis, Inc. 1988) (1960) ("[J]ust hold your head high and keep your fists down. No matter what anybody says to you, don't let 'em get your goat. Try fighting with your head for a change . . . it's a good one. Even if it resists learning.").

must affirm, first that they have read it, and then they affirm they will conform to it.

2. All Courts Must Require Lawyers to Read and Conform to the Texas Lawyer's Creed.

The Supreme Court of Texas and the State Bar of Texas should take a lesson from the federal courts. The local rules of the United States District Courts for the Northern District of Texas include a statement that all lawyers who engage in the practice of law in the Northern District will conduct themselves in accordance with the Texas Lawyer's Creed. Similarly, a rule should be promulgated that in every court of the State of Texas, lawyers will conduct themselves in accordance with Texas Lawyer's Creed.

3. Disciplinary Rules.

The disciplinary rules of conduct must be amended to identify a violation of the Oath of Attorney as a matter for discipline.[99] The Supreme Court of South Carolina did just that.[100]

4. Create Local Professionalism Panel.

The Florida Supreme Court has established specific methods of countering unprofessional behavior, whether or not it rises to the level of an ethical breach. One of those methods is working through Local Professionalism Panels (LPP). Each of the twenty Florida judicial circuits has an LPP.

Each judicial circuit's LPP is composed of local attorneys who have been appointed to review complaints about perceived unprofessional behavior by lawyers. This may be done informally by phone or more formally by email or regular mail. A local panel member will attempt to resolve the complaint informally if possible, or may choose to refer it to the Attorney Consumer Assistance Program (ACAP) for further action. (Available at https://www.floridabar.org/prof/local/).

5. Mandatory Professionalism Courses.

Colorado requires all attorney and LPP applicants for admission to practice law in Colorado to attend a mandatory course entitled "Practicing with Professionalism" presented by the Office of Attorney Regulation Counsel in cooperation with the Colorado Bar Association-CLE. This one-day course is offered several times throughout the year.

Bar examination applicants may complete this course either before or after sitting for the Colorado bar examination. However, exam applicants must complete this course as a condition for admission. An applicant will not be cleared to take the Oath of Admission unless this requirement

[99] David A. Grendardo, "Civility Rules: Debunking the Major Myths Surrounding Mandatory Civility for Lawyers and Five Mandatory Civility Rules that will Work," *The Georgetown Journal of Legal Ethics*, 37, no. 2 (Spring 2024):167, (Professor Grenardo proposes mandatory civility enforced by the disciplinary bodies of the respective jurisdictions. He contends, "Mandatory civility has several compelling advantages. Those include the following: increasing accountability, improving health and wellness, covering more lawyers (instead of just litigation attorneys in pending cases), preserving judicial resources, reducing costs for clients, decreasing stress for attorneys by allowing lawyers to focus on the merits of cases, and improving perceptions about lawyers and the legal system.").

[100] *See: In re Anonymous Member of South Carolina Bar*, 392 S.C. 328, 709 S.E.2d 633, 335 (2011).

is met. Exam applicants are encouraged to register and complete this course as soon as feasible. The course credential is valid for eighteen months from the date the course was completed. Those admitted to the bar on Motion, UBE Score Transfer, and Limited License Attorneys must also complete the course. (Available at https://www.coloradolegalregulation.com/current-lawyers/practiceprofessionalismcourse/).

6. Survey on Civility, Incivility, and Bullying.

The Texas Supreme Court and the State Bar of Texas should survey the bar and judiciary to obtain a solid sense of whether incivility and bullying are significant adverse forces in the legal profession. Reliable survey results will tell the Texas legal profession where it is on the civility/incivility spectrum and suggest how real improvements can be implemented.[101]

VII. Conclusion.

Whether we conclude incivility and lack of professionalism constitute what Professor Harrell called a "cultural matter"[102] or definable societal decay,[103] each member of the legal profession must slow down and scrutinize what is going on in the profession.

Unfortunately, those who choose to bully and conduct themselves uncivilly, will do so on the theory no one will do anything about their conduct. Most of those types figure they can dodge the crucible of *Dondi* by artfully keeping their actions from a court's scrutiny. Yet, that errant element of the legal profession, like its uncivil counterpart in society generally, is simply hard to control.

Each member of the legal profession must, in effect, grow thicker skin and avoid the bait tossed out by the uncivil lawyer to induce a response in kind. The message about taunting and bullying offered by Atticus Finch is a powerful antidote for incivility. That is, "Don't let 'em get your goat."[104] Perhaps with focus on education of beginning lawyers and mentoring, fewer uncivil types will squeeze their way into the legal profession and create adversity and barriers in our legal system.

Critics of professionalism codes, civility oaths, and civility enforcement, argue those measures threaten First Amendment Rights and zealous advocacy, are unnecessary, vague, and

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[101] See *"Survey on Professionalism-A Study of Illinois Lawyers 2021*," (Available at https://civility.wpenginepowered.com/wp-content/uploads/2021/12/ILSCCP-Civility-Survey-Report-2021.pdf); Stephanie A. Scharf & Roberta D. Liebenberg, *"Bullying in the Legal Profession: A Study of Illinois Lawyers' Experiences and Recommendations for Change,* "Illinois Supreme Court Commission on Professionalism (2024).(Available at https://civility.wpenginepowered.com/wp-content/uploads/2024/10/2Civility_BullyingReport_Full_FN.pdf).

[102] Thomas A. Harrell, "An Old Curmudgeon Looks at Professionalism."

[103] Robert C.L. Moffat, "Incivility as a Barometer of Societal Decay," *Florida Philosophical Review*, Volume I, Issue 1, (Summer 2001): 63; Russell G. Pearce & Eli Wald, "The Obligation of Lawyers to Heal Civic Culture: Confronting the Ordeal of Incivility in the Practice of Law," *University Arkansas Little Rock Law Review* 34, (2011): 1, 5 ("[L]awyers have contributed to the civic malaise, in and outside of the legal profession. No matter how lawyers view their role, they do serve as civics teachers who explain the appropriate responsibilities of citizenship both in their everyday practice and in their civic leadership.").

[104] See footnote 98.

unworkable.[105] Others consider unprofessionalism and incivility nothing new.[106] The debate will rage on seemingly forever.

Justice O'Connor exhorted lawyers and judges alike to proactively pursue an increase in the spirit of civility and professionalism. She wrote, "More civility and greater professionalism can only enhance the pleasure lawyers find in practice, increase the effectiveness of our system of justice, and improve the public's perception of lawyers."[107] Well said, Justice O'Connor. Let us give a toast to Justice O'Connor and the future pursuit of civility and reasonable behavior.

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[105] Amy R. Mashburn, *Making Civility Democratic, Houston Law Review* 47, (2011): 1147, 1221-22, ("Existing codes use words like 'civility,' 'disrespect' and 'discourteous,' which experience suggests cannot be given a sufficiently narrow meaning in a pluralistic society.... The intent of the offender matters and perceptions of rudeness and disrespect are very subjective and contingent. However, assessing the mental state of lawyers at the time they misbehave is prohibitively difficult and worrisome. A psychological approach may produce an unpopular, de facto presumption against sanctioning attorneys for their rude outbursts, but it also avoids unnecessary intrusions into First Amendment rights and allays concerns about the due process implications of judges sitting in judgment of lawyers who are accused of insulting them!).; Brenda Smith, Comment, "Civility Codes: The Newest Weapons in the 'Civil' War over Proper Attorney Conduct Regulations Miss Their Mark," *University of Dayton Law Review* 24, (1998): 151, 152—53 ("Many of the civility codes, whether general or specific, employ vague and aspirational words such as integrity, civility, and courtesy, which have been criticized as being 'highly contingent, contextual and indeterminate' words. Such words can be subject to many different interpretations and definitions and cover a broad range of behavior. If such broad words would lead a person to question exactly what kind of behavior is prohibited, the civility codes could be found unconstitutionally vague.").

[106] Craig Enoch, "Incivility in the Legal System? Maybe It's the Rules," *SMU Law Review* 47, (1994): 199, 202, (discussing the existence of incivility in the practice of law as of the article's date in 1994, suggesting incivility, i.e., "sharp" practices (also referring to them as "Rambo" tactics) in the law, are no more prevalent than in the past, "there are just more lawyers").

[107] Sandra Day O'Connor, "Professionalism," *Washington University Law Quarterly* 76, (1998): 5, 8.



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The Texas Lawyer's Creed—A Mandate for Professionalism

By Fred Hagans

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.

— Justice Eugene Cook



When Eugene Cook began the "professionalism project," he wanted to encourage a thoughtful discourse about the nature of the legal profession, particularly as it relates to the litigation segment. He wanted to strengthen the focus on how lawyers can serve our society as compared to how society can serve lawyers. Justice Cook fully recognized that improving the professionalism of lawyers is a worthy goal that is neither simple nor easy.

Professionalism includes core concepts—honesty, loyalty, competency, and civility to name a few. Throughout his career and his life, Justice Cook often referred to a quote encapsulating many of the professionalism concepts: "Lawyers need to learn how to disagree without being disagreeable." And he recognized that lawyers face stresses and pressures that can lead to unprofessional conduct such as the "win at any cost" mentality.

Justice Cook's goal was to diagnose the perceived decline in professionalism and to propose a path for improving professionalism. The beginning point was to examine the definition of "professionalism," using a quote from Roscoe Pound: "a learned art pursued as a common calling in the spirit of public service." Justice Cook also emphasized that improving professionalism required commitment by the bar itself (individual lawyers and law firms), bar associations, judges, and law schools.

The Texas Lawyer's Creed—A Mandate for Professionalism was adopted on November 7, 1989. In the order adopting the Professionalism Creed, the Supreme Court of Texas and the Court of Criminal Appeals provided guidance on professionalism:

- "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 Courts are "committed to eliminating … abusive tactics" … which "range from lack of civility to outright hostility and obstructionism."

- "These rules are primarily aspirational."

- "As members of a learned art we pursue a common calling in the spirit of public service."

The preamble to the Creed reminds lawyers that they "are entrusted by the People of Texas to preserve and improve our legal system" and "that professionalism requires more than merely avoiding the violation of laws and rules."

The Creed is subdivided into four sections—duties to the Legal System, duties of lawyers to clients, duties of lawyers to lawyers, and duties between lawyer and judge:

I. Our Legal System—a key portion of the duties to the legal system includes "dignity, integrity, and independence," which is encapsulated in the statement: "I am passionately proud of my profession. Therefore, 'My word is my bond.'"

II. Lawyer to Client—lawyers owe allegiance, learning, skill, and industry to their clients. This includes educating clients about the duty "to provide objective and independent advice," treating "adverse parties and witnesses with fairness and due consideration," and not pursuing "conduct which is intended primarily to harass or drain the financial resources of the opposing party."

III. Lawyer to Lawyer—with respect to opposing counsel, a lawyer owes the duty of "courtesy, candor, cooperation, and scrupulous observance of all agreements and mutual understandings." The section provides detailed examples of both proper and improper conduct.

IV. Lawyer and Judge—importantly, the Creed states that 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."

Importantly, Justice Cook followed these same principles in creating and collaborating with the Advisory Committee on Professionalism and the drafting subcommittee. He sought diversity representation from plaintiff and defense lawyers, law deans and professors, federal and state judges, solo practitioners, and law firms. Additionally, input was sought and received

from attorneys throughout the state, including suggestions, comments, concerns, and questions. Justice Cook drew on his years volunteering with Special Olympics by adopting its motto for this project: "Together we all win."



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The History, Philosophy, and Significance of the Texas Standards for Appellate Conduct

By Charles "Skip" Watson and Kevin Dubose

I. Origin and History of the Standards for Appellate Conduct

The efforts that culminated in the creation of the *Standards for Appellate Conduct* began just over thirty years ago. It was a great example of dedicated lawyers coming together under the structure and authority of the State Bar of Texas to produce a practical and aspirational document that would both clarify and inspire a more ethical culture for the appellate community. The two of us were both fortunate to be in the thick of that effort, and we have been asked to look back at the origin of the *Standards*, reflect on their significance, and address how they have and should continue to guide our conduct in the appellate courts of Texas.

A. Setting the Stage for the *Standards.*

In the mid-1980s, Texas trial lawyers began to express concern about a rise in overly aggressive and unprofessional litigation tactics, often described as "Rambo litigation tactics." Although some of those practices undoubtedly had been engaged in since the early days of the Republic, they were largely swept under the rug. The difference in the 1980s was that these tactics became more widespread and unapologetically brazen, to the point that some firms and individual lawyers began to proudly tout their obstreperousness as a conscious strategy and a marketing tool.

To reverse this trend, Supreme Court of Texas Justice Eugene Cook formed a committee to study these practices and draft a document to articulate aspirational goals to restore civility to the practice. Bipartisan support was generated by asking well-known and respected representatives of both the defense bar and the plaintiffs' bar to co-chair the committee. The defense lawyer was James "Blackie" Holmes of Dallas, and the Plaintiffs' lawyer was Fred Hagans of Houston.

The committee drafted a ground-breaking statement of how lawyers should strive to comport themselves, which was well-received and quickly embraced. In 1989, the Texas Supreme Court and Texas Court of Criminal Appeals jointly promulgated *The Texas Lawyer's Creed – A Mandate for Professionalism*. It has been widely circulated and cited, and has become a vital part of the Texas legal culture. But it unquestionably is directed to a trial litigation practice.

At roughly the same time, appellate CLE courses in Texas began featuring occasional presentations on ethical issues unique to an appellate practice. The adoption of the *Texas Lawyer's Creed* for trial lawyers and the treatment of similar issues in appellate CLE courses triggered

discussions among appellate lawyers about whether it might be useful to have a similar body of guidelines aimed at an appellate practice. The initial reaction of many was that the appellate bar did not need a creed because it was not plagued by the same rampant unprofessionalism and Rambo tactics as the trial bar.

B. The Inception of the *Standards.*

When Kevin Dubose became Chair of the State Bar of Texas Appellate Practice and Advocacy Section in 1995, he appointed an "Appellate Lawyers' Creed Committee," charged with drafting standards for professional conduct in the appellate courts. His first move was to ask Charles "Skip" Watson to chair the Committee. Other appointments included: the Honorable Gene Cook (Justice, Supreme Court of Texas, 1998-92), the Honorable Ann McClure (Justice, El Paso Court of Appeals, 1995-2019), Jessie Amos (then Third Court of Appeals Staff Attorney), Stephen Tatum, David Gunn (now Justice on the First Court of Appeals), David Hricik, and Shane Sanders.


Justice Eugene Cook


James "Blackie" Holmes


Fred Hagans


Justice Ann McClure


Stephen Tatum


Justice David Gunn


David Hricik


Shane Sanders

Although the Committee's efforts were certainly informed by the *Texas Lawyer's Creed*, it realized its task was fundamentally different because it was not reacting against or attempting to rein in a proliferation of unprofessional practices. Rather, the *Standards* were intended to be a recognition of the culture of civility that already had developed in the appellate bar in Texas. The goal was to create guidelines to educate attorneys who may not be aware of the different culture that awaited them in the appellate courts, and to provide all appellate practitioners with ammunition to use against clients who expected overly aggressive and unprofessional behavior.

C. Drafting the *Standards.*

The Committee began by studying approximately forty creeds or professionalism standards adopted in other jurisdictions, which had been gathered by Justice Eugene Cook. These came from states, counties, and the federal Seventh Circuit Court of Appeals. While helpful in providing background and context, all of these standards targeted litigation in the trial courts; none specifically addressed professionalism issues in an appellate practice.

The Committee spent time thinking deeply about possible motivations for unprofessional conduct that might occur in appellate practice, the reasons that conduct seemed to be less prevalent in the appellate courts than in trial court litigation, examples of unprofessionalism in appellate courts, and how best to address the problem. The primary theme that emerged from those discussions was that unprofessional conduct is often rationalized by lawyers who believe they are fulfilling a duty to "zealously" represent their clients.[1] This view fails to recognize that lawyers have multiple duties, not only to their clients, but also to the court system and to opposing counsel. The Committee concluded that the essence of professionalism is the balancing of these conflicting duties.

This Committee decided that drafting and promulgating standards would assist appellate practitioners confronted with potentially conflicting duties arising from each of the professional relationships inherent in the practice. Committee chair Skip Watson suggested that "standards for conduct" be drafted, rather than an "appellate creed" (the term that had previously been used in initial discussions). This concept is articulated in the Preamble to the *Standards* and is further underscored in the structure of the document, which is ordered around the separate duties owed to clients, other appellate counsel, and the courts. Thus, a structure for the *Standards* emerged that focused on the duties arising from each of the relationships that require guidance in the appellate practice.

Sections addressing each of those relationships were assigned to individual committee members for original drafting. Drafts were completed and each was circulated to all committee members for rigorous editing. The committee gathered for in-person meetings[2] in Austin every few months for lively and provocative discussions. Everyone pulled their weight. We later agreed that we had never worked on a bar committee that was so engaged and committed across the board.

After almost a year of rigorous work, the Committee's final draft of the "Standards for Appellate Conduct" was submitted to the Council of the Appellate Practice and Advocacy Section of the State Bar of Texas. The Council approved the draft in August 1996.

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[1] Nothing in the Texas Disciplinary Rules of Professional Conduct (TDRPC) contemplates that "zealous" means discourteous or disrespectful. The word "zealously" appears twice in the TDRPC Preamble: Paragraph 2 says, "a lawyer zealously asserts the client's position **under the rules of the adversary system**," and Paragraph 3 says, "a lawyer should zealously pursue clients' interests **within the bounds of the law**." (emphasis added) Paragraph 4 adds that lawyers should "use the law's procedures only for legitimate purposes and not to harass or intimidate others. A lawyer should demonstrate respect for the legal system and for those who serve it, including judges, other lawyers, and public officials."

[2] This was long before Zoom videoconferences, and even before the widespread use of conference calls.

D. Obtaining Promulgation of the *Standards.*

The *Standards* were provided to, and comments solicited from, every judge in Texas, trial and appellate, state and federal, and all former appellate Chief Justices. They also were sent to representatives of every Section of the State Bar of Texas, to former members of the *Texas Lawyers Creed* Committee, the State Bar's General Counsel, and local bar leaders. If anything, the distribution list erred on the side of over-inclusiveness, as we strived to reach everyone who might have an interest in this effort and give them an opportunity to be heard.

Comments were received from around the State. The majority of responses were at least favorable; most were enthusiastic. A few suggested minor amendments, which were carefully considered, and some accepted and implemented.

After this thorough review process of communication and comments, the State Bar Board of Directors unanimously approved *the Standards for Appellate Conduct*, and submitted them to the Texas Supreme Court and the Texas Court of Criminal Appeals. Those courts then further studied and discussed the *Standards*. On February 1, 1999, the Texas Supreme Court and Texas Court of Criminal Appeals issued an order jointly promulgating the *Standards for Appellate Conduct*, applicable to all appellate courts in the State of Texas.

E. The *Standards*' Place in History.

The Texas Standards for Appellate Conduct were the first ethical guidelines adopted in the United States specifically targeting practice in the appellate courts. No other jurisdiction has followed suit, though appellate lawyers from other jurisdictions have requested copies of the *Standards* and have indicated an interest in adopting something similar. None has been able to follow through.

II. The Philosophy of the *Standards.*

A. Identifying the Problems, the Best Approaches, and Resulting Solutions.

The drafters wanted the *Standards* to be more than platitudes. Thus, the Preamble focuses on lawyers' role as officers of courts that rely on them to frame and address issues. It then identifies conflicting duties owed to clients, courts, and other lawyers as causing most unprofessional conduct. It foreshadows the *Standards'* focus on misuse of the duty of zealous representation to justify violating duties owed to the court and other officers of the court.

B. The Appellate Lawyer's Unique Role.

The Preamble begins by clarifying the appellate lawyer's unique role as an essential officer of appellate courts trying to accurately apply the law to the facts of each case. It identifies the courts' reliance on appellate lawyers to provide accurate and thorough analysis of the law and record as essential to the courts' ability to effectively dispense justice. While in an adversarial process, appellate lawyers are often in a more collaborative relationship with the justices deciding

their appeal, and even with each other, than their trial court counterparts. Hence the Preamble recognizes the necessity of recognizing duties owed to all participants in an appeal.

C. Balancing Conflicting Duties.

The drafters of the *Standards* recognized that unprofessional conduct often arises because of the tendency to overemphasize one duty to the exclusion of others. This principle is expressed in the second paragraph of the Preamble to the *Standards*:

> Problems that arise when duties conflict can be resolved through understanding the nature and extent of a lawyer's respective duties, avoiding the tendency to emphasize a particular duty at the expense of others, and detached common sense. To that end, the following standards of conduct for appellate lawyers are set forth by reference to the duties owed by every appellate practitioner.[3]

To emphasize and aid balancing duties, the *Standards* are structured according to the duties owed by counsel to **clients**, the **courts**, and **other counsel**. They then address the **courts' duties to counsel.**

D. Suggestions For Civility Are Not a Tool for Sanctions.

The Committee felt strongly that the *Standards* should **not** be used as a hammer to enforce good behavior, lest they increase contentious bickering between lawyers and create or perpetuate a problem rather than providing a solution. Accordingly, it included a provision in the preamble prohibiting the offensive use of the *Standards*. "Use of these standards for appellate conduct as a basis for motions for sanctions, civil liability or litigation would be contrary to their intended purpose and shall not be permitted."[4] This provision proved essential to the State Bar's endorsement and the willingness of the Supreme Court and the Court of Criminal Appeals to promulgate the *Standards*.

But just because the *Standards* are not intended to be used as a sword does not mean that they should be disregarded by counsel who practice in Texas appellate courts. The *Standards* have been embraced by those courts,[5] and they eloquently communicate the level of professionalism and civility that is expected. Conduct that violates these expectations is likely to generate disfavor among appellate justices, consciously and unconsciously.

E. Duty to Educate Clients About the *Standards.*

The drafters of the *Standards* wanted to avoid the possibility of appellate lawyers trying to justify unprofessional behavior by claiming to be acting under instructions from clients who are not aware of the *Standards*. So, the section of the *Standards* entitled "Lawyers' Duties to Clients" contains numerous references to the duty of lawyers to inform their clients about the contents of the *Standards*.

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[3] *Standards for Appellate Conduct*, Preamble.

[4] *Standards for Appellate Conduct*, Preamble.

[5] A recent Westlaw search indicates 34 appellate opinions in which courts have cited the *Standards.*

The first standard in the section on Lawyers' Duties to Clients states this principle broadly: "Counsel will advise their clients of the contents of these Standards of Conduct when undertaking representation."[6] Lawyers are not directed to wait until a problem arises, but to advise their clients of the *Standards* "when undertaking representation." To eliminate any doubt, lawyers should include a copy of the *Standards* with the engagement letter or fee agreement confirming an appellate engagement.

Four other standards in this section begin with the words "Counsel will advise their clients. . ." or "Counsel will advise clients. . . ."[7] These standards address advising clients that civility and courtesy are expected, that reasonable requests by opposing counsel should be granted, that an appeal should only be taken upon a good faith belief that it is warranted, and that frivolous positions will not be taken.[8] By placing this pervasive emphasis on educating clients about the expectation of civility and professionalism, the *Standards* attempt to address the problem of clients insisting on unprofessional conduct.

III. Structure and Summary of the *Standards.*

The *Standards for Appellate Conduct* are structured according to the duties that lawyers owe to the participants in the appellate process.

As noted, the **Preamble** explains the need for the *Standards* by focusing on the problem addressed and the intellectual underpinning and principles at the foundation of their approach and structure. It emphasizes the critical role that lawyers play in the appellate process, acknowledges the duties owed by lawyers to the other participants in the appellate process, in addition to clients, and the need to recognize and balance those interests. It acknowledges that these duties "are generally well-defined and understood by the appellate bar" and that most problems resulting in unprofessional conduct come from losing sight of how a given duty should be viewed in light of the lawyer's other duties. The Preamble cautions that use of the *Standards* as grounds for sanctions or civil liability is the antithesis of what they were created to accomplish and is forbidden. The Preamble also clarifies that the *Standards* are not intended to alter existing ethical and professional guidelines like the Texas Disciplinary Rules of Professional Conduct or the Code of Judicial Conduct.

The **Lawyers' Duties to Clients** section addresses the responsibility to keep clients informed about the *Standards* and their emphasis on civility, courtesy, cooperation and accommodation. It also instructs lawyers to inform clients about the appellate process in general so they will have reasonable expectations about timing, costs, and potential outcomes. This section also contains admonitions that the appellate process should be used only in good faith to pursue legitimate legal positions.

The **Lawyers' Duties to the Court** section emphasizes the necessity for scrupulous integrity and accuracy in identifying controlling law and record facts, as well as decorum, civility,

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6 *Standards for Appellate Conduct*, Lawyers' Duties to Clients at 1.

7 *See Standards for Appellate Conduct*, Lawyers' Duties to Clients at 9, 10, 12, 13.

8 *See Standards for Appellate Conduct*, Lawyers' Duties to Clients at 9, 10, 12, 13.

and respect. This section repeats the admonition against using the appellate process to assert frivolous positions or for the purpose of delay. It also encourages thorough preparation to assist the court, scrupulous honesty to avoid misleading the court, and punctuality to avoid inconveniencing the court. It also emphasizes the duty to disclose relevant authority, even when — perhaps especially when — it is adverse.

The **Lawyers' Duties to Lawyers** section addresses the importance of treating opposing counsel — and parties — with respect. It encourages lawyers not to oppose reasonable requests for cooperation or scheduling accommodations, and to refrain from personal attacks or the attribution of bad motives, improper conduct, or other impropriety.

The **Court's Relationship with Counsel** section is a recognition of the critical role that appellate justices play in setting a tone of professionalism in the appellate courts. There was some resistance to including this section from some judges who questioned whether a section of the Bar had authority to draft standards advising judges about their responsibilities. But the drafters felt strongly that the *Standards* reflect an awareness that courtesy and respect between counsel and the courts is a two-way street, and that both the bench and the bar share responsibility for professionalism. This concern resulted in this section's title being changed from "The Court's Duty to Counsel," which would have mirrored the other sections of the *Standards*, to "The Court's Relationship with Counsel."

This section encourages judges to show the same civility, respect, and courtesy to lawyers and other judges that are expected of lawyers. It also recognizes that the best way to encourage professional conduct among lawyers is for appellate judges to refrain from rewarding unprofessional conduct when it does occur, and to reward exemplary conduct. It encourages appellate judges to exercise integrity and professionalism in their treatment of the factual record, the applicable law, and the arguments of counsel. It even states that courts will "endeavor to avoid the injustice that can result from delay after submission of a case."[9]

IV. Reasons to Comply With the *Standards.*

A. It's the Right Thing to Do.

In this instance, the saying that "Virtue is its own reward," has some truth. Treating other appellate lawyers in a more civilized and accommodating manner usually makes you feel better about yourself. It will certainly make opposing counsel feel better about you when they have to deal with you in other cases, or when considering people for appellate referrals. It will undoubtedly make the appellate justices and court staff feel better if they perceive that they are engaged in the dignified task of resolving disputes and meting out justice rather than refereeing a cat fight. As the preamble to the *Texas Lawyer's Creed* states: "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."

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[9] *Standards of Appellate Conduct*, The Court's Relationship with Counsel at 5.

B. Compliance Enhances the Chances of Achieving a Favorable Result.

Uniformly, appellate justices find the conduct cautioned against in the *Standards* to be offensive and a waste of their time. Although those justices decide cases based on the law and the facts rather than on the behavior of the advocates, they are also human beings whose perception of the substantive message is inevitably influenced by their feelings about the messenger. Credibility plays a role in decision-making, and human beings do not place much credibility in those persons they consider to be offensive. Moreover, the justices may conclude, consciously or unconsciously, that persons who resort to unprofessional tactics are doing so in order to gain an unfair advantage because they lack the conviction in their substantive arguments to prevail if they play the game fairly. In short, in a profession where the ultimate goal is coming out on the right side of the delicate balance of persuasion, starting out with a negative perception can be the difference between success and failure.

Appellate courts really do expect a higher level of professionalism and ethical conduct than what is often seen in the trial courts. Any lawyer who comes into the appellate courts, ignoring the *Standards* and behaving in a manner that is perceived as overly adversarial, non-cooperative, or less than completely candid is likely to be noticed and remembered, to the detriment of their current client and future clients. Ethical conduct in the appellate courts is not only a good idea, it is undeniably expected by the appellate courts. And frustrating that expectation increases the likelihood of unfavorable results.

In an opinion by the Fourteenth Court of Appeals, former **Chief Justice Kem Thompson Frost** eloquently expressed the court's frustration with unethical conduct and the adverse impact it can have on the client's case:

> When counsel misrepresent the facts on which their legal arguments are based, they not only delay the entire process by unnecessarily adding to the court's workload, but also render a tremendous disservice to their clients. It is also a very poor strategy to misrepresent the record because any material misstatements and/or omissions will almost certainly be detected by opposing counsel, the appellate panel, and/or the court's alert and able staff.

Schlafly v. Schlafly, 33 S.W.3d 863, 873 (Tex. App.—Houston [14th Dist.] 2000, pet. denied).
Thus, even if you are cynical enough to not be motivated to do the right thing simply because it is right, you should at least do the right thing because it is calculated to improve your client's chances of winning.

C. The Reasons to Disregard the *Standards* Are Unconvincing.

Appellate advocates may choose to disregard the *Standards* for a variety of reasons. The most common explanations, and the reasons that they are unconvincing are as follows:

"My clients expect me to play hardball with their despised enemies."

Clients who are uneducated about the appellate process and the ethical standards of the profession may sincerely believe that their position is best served by an aggressive, combative, uncooperative posture in all aspects of the appeal. However, just as lawyers have a duty to educate their clients about the substantive law, they also have a duty to educate their clients about the way that the game is, or should be, played. The *Standards* recognize this problem of clients who want to vent their spleen through the conduct of their appellate counsel, and place the burden on the attorney to educate the client about the inappropriateness of these expectations.

The *Standards* approach this problem in two ways: (1) by specifying what an appellate attorney must advise their clients regarding professionalism, and (2) by limiting what clients have a right to expect from their attorneys. Attorneys must "advise their clients of the contents of the Standards of Conduct when undertaking representation."[10] They must advise their clients "of proper behavior, including that civility and courtesy are expected,"[11] and that the attorney "reserves the right to grant accommodations to opposing counsel in matters that do not affect the client's lawful objectives."[12] The client has no right to "instruct a lawyer to refuse reasonable requests made by other counsel,"[13] or to "demand that counsel abuse anyone or engage in any offensive conduct."[14]

Thus, although the lawyer owes the client a duty to abide by the client's wishes, that duty does not override the concurrent duty to behave in a professional manner. If the client demands unprofessional conduct, and the attorney is unable to persuade the client otherwise, withdrawal may be the only alternative.[15]

"They did it first."

The "they started it" justification for misconduct most often is heard in fights between children. It is considerably more disappointing to hear from grown professionals. The lawyer's version of this whine usually goes something like, "I can be pretty easy to get along with as long as the other attorney plays fair with me, but if they mess with me, I have the right to respond in kind."

That reaction is understandable as an initial emotional response to unprofessional conduct. However, the temptation to respond in kind should be resisted. Wait a couple of days to cool off before firing off an angry response. **If** it's really necessary to get your mind back on the dispositive issue, go ahead and compose a venomous retort, **but** then delete it or edit it severely, when cool, detached reason is back in control. Don't waste the advantage an opponent's unprofessionalism hands you. When one party stoops to unprofessional conduct, and the other party adheres to the high standards of a true professional, the contrast is vivid and apparent to the appellate court. Judges appreciate an attorney who takes the high road, even when attacked. Thus, when it comes to professionalism, "turn the other cheek" is a far more effective rule than "an eye for an eye, and a tooth for a tooth." It stays focused on the dispositive issue.

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[10] *Standards for Appellate Conduct*, Lawyers' Duties to Clients at 1.

[11] *Standards for Appellate Conduct*, Lawyers' Duties to Clients at 9.

[12] *Standards for Appellate Conduct*, Lawyers' Duties to Clients at 10.

[13] *Standards for Appellate Conduct*, Lawyers' Duties to Clients at 10.

[14] *Standards for Appellate Conduct*, Lawyers' Duties to Clients at 11.

[15] *See Texas Disciplinary Rule of Professional Conduct* 1.02, cmt. 8.

V. Conclusion

The *Standards* were neither written not promulgated with the intention of reining in an appellate culture that had veered out of control on ethical practices. Instead, they were a confirmation and clarification of the practices that already had evolved in the Texas appellate culture. For the most part, they continue to be observed and followed by most appellate practitioners. But standards and guidelines are typically not adopted to regulate the usual practice, but to address and clarify proper behavior in the atypical situation. These *Standards* provide a valuable service in that regard.

It is possible that today the *Standards* are not as "front of mind" for most appellate practitioners as when they were first promulgated twenty-seven years ago. But they should remain as vital and important today as when they were promulgated. Experienced appellate practitioners who were around when they were first promulgated should re-familiarize themselves with them. And practitioners who have begun their appellate practice in the past twenty-seven years, who may not be aware of the *Standards* at all, should do themselves a favor and spend some time getting to know them. If we all did this, the appellate bench and bar would both benefit.

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Standards for Appellate Conduct

Lawyers are an indispensable part of the pursuit of justice. They are officers of courts charged with safeguarding, interpreting, and applying the law through which justice is achieved. Appellate courts rely on counsel to present opposing views of how the law should be applied to facts established in other proceedings. The appellate lawyer's role is to present the law controlling the disposition of a case in a manner that clearly reveals the legal issues raised by the record while persuading the court that an interpretation or application favored by the lawyer's clients is in the best interest of the administration of equal justice under law.

The duties lawyers owe to the justice system, other officers of the court, and lawyers' clients are generally well-defined and understood by the appellate bar. Problems that arise when duties conflict can be resolved through understanding the nature and extent of a lawyer's respective duties, avoiding the tendency to emphasize a particular duty at the expense of others, and detached common sense. To that end, the following standards of conduct for appellate lawyers are set forth by reference to the duties owed by every appellate practitioner.

Use of these standards for appellate conduct as a basis for motions for sanctions, civil liability or litigation would be contrary to their intended purpose and shall not be permitted. Nothing in these standards alters existing standards of conduct under the Texas Disciplinary Rules of Professional Conduct, the Texas Rules of Disciplinary Procedure or the Code of Judicial Conduct.

Lawyers' Duties to Clients

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 a real or imagined fear of judicial disfavor or public unpopularity, nor be influenced by mere self-interest. The lawyer's duty to a client does not militate against the concurrent obligation to treat with consideration all persons involved in the legal process and to avoid the infliction of harm on the appellate process, the courts, and the law itself.

1. Counsel will advise their clients of the contents of these Standards of Conduct when undertaking representation.

2. Counsel will explain the fee agreement and cost expectation to their clients. Counsel will then endeavor to achieve the client's lawful appellate objectives as quickly, efficiently, and economically as possible.

3. Counsel will maintain sympathetic detachment, recognizing that lawyers should not become so closely associated with clients that the lawyer's objective judgment is impaired.

4. Counsel will be faithful to their clients' lawful objectives, while mindful of their concurrent duties to the legal system and the public good.

5. Counsel will explain the appellate process to their clients. Counsel will advise clients of the range of potential outcomes, likely costs, timetables, effect of the judgment pending appeal, and the availability of alternative dispute resolution.

6. Counsel will not foster clients' unrealistic expectations.

7. Negative opinions of the court or opposing counsel shall not be expressed unless relevant to a client's decision process.

8. Counsel will keep clients informed and involved in decisions and will promptly respond to inquiries.

9. Counsel will advise their clients of proper behavior, including that civility and courtesy are expected.

10. Counsel will advise their clients that counsel reserves the right to grant accommodations to opposing counsel in matters that do not adversely affect the client's lawful objectives. A client has no right to instruct a lawyer to refuse reasonable requests made by other counsel.

11. A client has no right to demand that counsel abuse anyone or engage in any offensive conduct

12. Counsel will advise clients that an appeal should only be pursued in a good faith belief that the trial court has committed error or that there is a reasonable basis for the extension, modification, or reversal of existing law, or that an appeal is otherwise warranted.

13. Counsel will advise clients that they will not take frivolous positions in an appellate court, explaining the penalties associated therewith. Appointed appellate counsel in criminal cases shall be deemed to have complied with this standard of conduct if they comply with the requirements imposed on appointed counsel by courts and statutes.

Lawyers' Duties to the Court

As professionals and advocates, counsel assist the Court in the administration of justice at the appellate level. Through briefs and oral submissions, counsel provide a fair and accurate understanding of the facts and law applicable to their case. Counsel also serve the Court by respecting and maintaining the dignity and integrity of the appellate process.

1. An appellate remedy should not be pursued unless counsel believes in good faith that error has been committed, that there is a reasonable basis for the extension, modification, or reversal of existing law, or that an appeal is otherwise warranted.

2. An appellate remedy should not be pursued primarily for purposes of delay or harassment.

3. Counsel should not misrepresent, mischaracterize, misquote, or miscite the factual record or legal authorities.

4. Counsel will advise the Court of controlling legal authorities, including those adverse to their position, and should not cite authority that has been reversed, overruled, or restricted without informing the court of those limitations.

5. Counsel will present the Court with a thoughtful, organized, and clearly written brief.

6. Counsel will not submit reply briefs on issues previously briefed in order to obtain the last word.

7. Counsel will conduct themselves before the Court in a professional manner, respecting the decorum and integrity of the judicial process.

8. Counsel will be civil and respectful in all communications with the judges and staff.

9. Counsel will be prepared and punctual for all Court appearances, and will be prepared to assist the Court in understanding the record, controlling authority, and the effect of the court's decision.

10. Counsel will not permit a client's or their own ill feelings toward the opposing party, opposing counsel, trial judges or members of the appellate court to influence their conduct or demeanor in dealings with the judges, staff, other counsel, and parties.

Lawyers' Duties to Lawyers

Lawyers bear a responsibility to conduct themselves with dignity towards and respect for each other, for the sake of maintaining the effectiveness and credibility of the system they serve. The duty that lawyers owe their clients and the system can be most effectively carried out when lawyers treat each other honorably.

1. Counsel will treat each other and all parties with respect.

2. Counsel will not unreasonably withhold consent to a reasonable request for cooperation or scheduling accommodation by opposing counsel.

3. Counsel will not request an extension of time solely for the purpose of unjustified delay.

4. Counsel will be punctual in communications with opposing counsel.

5. Counsel will not make personal attacks on opposing counsel or parties.

6. Counsel will not attribute bad motives or improper conduct to other counsel without good cause, or make unfounded accusations of impropriety.

7. Counsel will not lightly seek court sanctions.

8. Counsel will adhere to oral or written promises and agreements with other counsel.

9. Counsel will neither ascribe to another counsel or party a position that counsel or the party has not taken, nor seek to create an unjustified inference based on counsel's statements or conduct.

10. Counsel will not attempt to obtain an improper advantage by manipulation of margins and type size in a manner to avoid court rules regarding page limits.

11. Counsel will not serve briefs or other communications in a manner or at a time that unfairly limits another party's opportunity to respond.

The Court's Relationship with Counsel

Unprofessionalism can exist only to the extent it is tolerated by the court. Because courts grant the right to practice law, they control the manner in which the practice is conducted. The right to practice requires counsel to conduct themselves in a manner compatible with the role of the appellate courts in administering justice.

Likewise, no one more surely sets the tone and the pattern for the conduct of appellate lawyers than appellate judges. Judges must practice civility in order to foster professionalism in those appearing before them.

1. Inappropriate conduct will not be rewarded, while exemplary conduct will be appreciated.

2. The court will take special care not to reward departures from the record.

3. The court will be courteous, respectful, and civil to counsel.

4. The court will not disparage the professionalism or integrity of counsel based upon the conduct or reputation of counsel's client or co-counsel.

5. The court will endeavor to avoid the injustice that can result from delay after submission of a case.

6. The court will abide by the same standards of professionalism that it expects of counsel in its treatment of the facts, the law, and the arguments.

7. Members of the court will demonstrate respect for other judges and courts.



SKIP WATSON *focuses on appeals in the Texas Supreme Court. He serves on the Supreme Court Advisory Committee, has chaired the State Bar's Advanced Appellate Practice and Advanced Civil Trial Courses, chaired the State Bar Appellate Section, and served on the Pattern Jury Charge Committee. He has received the Chief Justice Jack Pope Professionalism Award from the Texas Center for Legal Ethics.*



KEVIN DUBOSE *has received the Chief Justice Jack Pope Professionalism Award from the Texas Center for Legal Ethics; the Lola Wright Foundation Award from the Texas Bar Foundation, and the Justice Eugene Cook Professionalism Award from the Houston Bar Association. He has served on the Board of Directors of the Texas Center for Legal Ethics and chaired that Board. He has written and spoken extensively about ethics, professionalism, and civility.*

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The Texas Center for Legal Ethics: Promoting Ethics and Professionalism for Over 35 Years

By Brad Johnson

Introduction

1989 was a landmark year for legal ethics and professionalism in Texas.

Texas Disciplinary Rules of Professional Conduct. In a 1989 referendum vote, Texas lawyers approved the Texas Disciplinary Rules of Professional Conduct.[1] The same year, the Supreme Court of Texas ordered the adoption of the Texas Disciplinary Rules of Professional Conduct—replacing the Texas Code of Professional Responsibility—with an effective date of January 1, 1990.[2] With amendments over the subsequent decades, the Texas Disciplinary Rules of Professional Conduct continue to govern lawyer conduct for purposes of professional discipline in Texas.

Texas Lawyer's Creed. In 1989, the Supreme Court of Texas established the Supreme Court Advisory Committee on Professionalism, which endeavored to draft a code of professionalism for consideration by the Supreme Court.[3] Chaired by Justice Eugene Cook, the committee undertook its work amid concerns that "unprofessional conduct had reached epidemic stage."[4] On November 7, 1989, the Supreme Court of Texas and the Texas Court of Criminal Appeals adopted "The Texas Lawyer's Creed -- A Mandate for Professionalism," which sets out professionalism standards for Texas lawyers. The order adopting the Texas Lawyer's Creed included a call to lawyers to "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."[5]

Texas Center for Legal Ethics. In addition to these efforts—and with the backdrop of concerns that led to the Texas Lawyer's Creed—1989 saw the creation of a permanent organization dedicated to legal ethics and professionalism: the Texas Center for Legal Ethics and Professionalism. Though the name has since been shortened to the Texas Center for Legal Ethics, the organization continues to focus on legal ethics *and* professionalism. As encapsulated in its current mission statement, the Center strives "[t]o promote the highest standards of ethics and professionalism." What follows is a brief history of the Center.

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1 "Texas' New Disciplinary Rules Become Effective Jan. 1, 1990," *Texas Bar Journal* 52, (1989): 989, 1023.

2 Order Nunc Pro Tunc of the Supreme Court of Texas promulgating the Texas Disciplinary Rules of Professional Conduct, (Oct. 17, 1989).

3 Eugene A. Cook, "Professionalism and the Practice of Law," *Texas Tech Law Review* 23, (1992): 955, 999; Cook, "The Search for Professionalism," *Texas Bar Journal* 52, (1989): 1245, 1302.

4 Fred Hagans, James H. Holmes III, Cook & Lamar McCorkle, "Reflections on the Texas Lawyer's Creed," *Texas Bar Journal* 72 (2009): 834.

5 Order of the Supreme Court of Texas and the Texas Court of Criminal Appeals adopting "The Texas Lawyer's Creed -- A Mandate for Professionalism" (Nov. 7, 1989).

Origins of the Center

The origins of the Center can be traced to the Texas Bar Foundation and the Litigation Section of the State Bar of Texas. And, more specifically, the origins can be traced to a June 29, 1988, letter from William Hilgers to the then-chair of the Texas Bar Foundation Board of Trustees, Edward Coultas.



William Hilgers



Edward Coultas



Fred Baker

In the letter, Hilgers expressed his "hope that the focus of the Bar can be redirected on our professional responsibility and of the urgency that must be addressed to the problem of legal ethics."[6] Hilgers also stated his "hope that the trustees [of the Texas Bar Foundation's board] will consider the establishment of the Texas Center for Professional Responsibility."[7]

Significantly, Hilgers enclosed with the letter "A Proposal for the Establishment of the Texas Center for Professional Responsibility." The document described the proposed foundation's purpose, in part, as "[providing] a permanent public foundation for the purpose of assuring the professional responsibility of lawyers and judges in protecting the public interest in their ethical standards."[8] Among other things, it also described a purpose of "provid[ing] seminars, symposia and forums for consideration of the issues and concerns of the ethical standards of the legal profession."[9] Overall, a considerable amount of the purpose set out in the proposal can be seen in the Center's eventual articles of incorporation.

On May 20, 1989, the State Bar Litigation Section Council "endorsed the concept of a Texas Center for Legal Ethics and Professionalism" and "pledged $10,000 to support the project."[10] Frank Baker, who chaired the Litigation Section at the time, later described that the Center "was conceived and supported May 20, 1989, in the Litigation Section."[11]

In September 1989, the Texas Bar Foundation's Professionalism Task Force met and discussed the creation of the Center.[12] The discussion appears to have been pursuant to a suggestion or mandate from the Foundation's board of trustees for "a further study of a Texas Center for Legal Ethics and Professionalism."[13] Chaired by Frank Baker, who had since completed his term as chair of the Litigation Section, the task force recommended to the

6 Letter from William B. Hilgers to Edward Coultas, Chair, Texas Bar Foundation (June 29, 1988).

7 *Ibid.*

8 "A Proposal for the Establishment of the Texas Center for Professional Responsibility," enclosed with Hilger's letter to Coultas discussed herein.

9 *Ibid.*

10 Frank W. Baker, "Chairman's Report," *State Bar Litigation Section Report: The Advocate* 8, no. 3 (June 1989).

11 Letter from Frank W. Baker, Trustee, Texas Center for Legal Ethics, to State Bar of Texas Board of Directors (Apr. 20, 1990).

12 Texas Bar Foundation Professionalism Task Force Report of Sept. 21, 1989 (as revised, with a cover letter dated Oct. 30, 1989).

13 *Ibid.*

Foundation's board that "the Texas Center for Legal Ethics and Professionalism be approved in concept and that it be studied for awhile by the task force."[14]

As described by Frank Baker in a report to the Foundation's board, "[T]he big thing that is on the mind of most of the people practicing law these days is what is happening in professionalism and ethics not only in Texas but nationally."[15]

Frank Baker summarized that the Center "would be a storehouse of knowledge about ethics and professionalism," adding that he thought it could eventually "put on seminars, symposiums, publish publications on the subject and in general coordinate the efforts that are going on now, including such things as the Creed or Code that has been adopted by the Supreme Court Advisory Committee on [P]rofessionalism."[16] The "Creed or Code" referenced was the Texas Lawyer's Creed, which would be adopted by the Supreme Court of Texas and the Texas Court of Criminal Appeals shortly after Baker's report to the Foundation's board.



Chief Justice
Robert Calvert

In September 1989, the Foundation's board approved the concept of the establishment of the Center. In November 1989, the Foundation's board approved actions to formally establish the Center, as well as initial funding by the Foundation for the organization.



Chief Justice
Joe Greenhill

Formation

On December 1, 1989, the Center was incorporated as a nonprofit corporation by three former chief justices of the Supreme Court of Texas—Robert Calvert, Joe Greenhill, and Jack Pope.[17] The Center's articles of incorporation set out the following purposes for the Center:

a. To provide a permanent center for the enhancement of legal ethics and professionalism in the legal profession to the end that justice and the public interest shall be served;

b. To provide a comprehensive educational and research program for the investigation and dissemination of ethical and professional values exemplifying the highest and best examples of those attributes in the legal profession;

c. To provide continuing review of the legal, moral and ethical standards of the legal profession;



Chief Justice
Jack Pope

[14] *Ibid.*

[15] *Ibid.*

[16] *Ibid.*

[17] Texas Center for Legal Ethics and Professionalism, Articles of Incorporation (1989).

d. To provide research and investigation in and to the system of professional responsibility for the legal profession at the national and state levels among the various jurisdictions;

e. To provide a bibliography of resource materials for the public and the profession in addressing the ethical, moral and public responsibility of lawyers;

f. To provide seminar, symposia, institutes, and forums for consideration of the issues and concerns of the ethical standards of the legal profession;

g. To provide publications, journals, audio and video materials for dissemination to the profession and to the public concerning the issues of legal ethics and professionalism for the legal profession;

h. To provide a forum for the public in addressing concerns affecting the public interest in legal ethics and professionalism; and

i. To make grants to individuals and institutions for scholarly research and publication in the area of professional ethics and professionalism.

j. To carry on such other educational and charitable activities as the Trustees may deem appropriate to enhance and perpetuate the highest ethical, moral and professional standards of lawyers and judges.[18]


James Branton


Berry Crowley


Franklin Jones, Jr.


Robert Meyers III

The Center's initial board of trustees included Frank Baker, Edward Coultas, and William Hilgers, as well as James Branton, Berry Crowley, Franklin Davis, William Edwards, Phil Jenkins, Franklin Jones Jr., Robert Meyers III, Texas Tech University School of Law Dean Frank Newton, and Harlow Sprouse.[19]

St. Mary's University School of Law Dean Emeritus James Casteleberry Jr. was selected as the Center's first executive director, and the Center was initially located at St. Mary's School of Law.[20]

In a 1990 letter to the State Bar's board of directors, Frank Baker said, "Both the Creed and the Center were born out of a recognized need to bring back civility, honor and respect to the legal profession."[21] Baker

[18] *Ibid.*

[19] *Ibid.*

[20] "San Antonio Selected as Site for Statewide Ethics Center," *Texas Bar Journal* 53, (1990): 406, 412.

[21] Letter from Frank W. Baker, Trustee, Texas Center for Legal Ethics, to State Bar of Texas Board of Directors (Apr. 20, 1990).


Frank Newton


Harlow Sprouse


James Castleberry Jr.


Timothy Floyd

added, "The Texas Center is not a law school, university or local project. Nor is it a disciplinary body. It is a Texas-wide project designed to embody ethics and professionalism in the practice of law, for the good of the public, profession and courts."[22]

Early Years

By the end of 1991, the Center, among other things, held two colloquiums of law professors teaching professional responsibility, hosted an exhibit booth at two State Bar annual meetings, compiled an extensive bibliography on legal ethics and professionalism, and took part in producing a video series of panel discussions recorded at Texas Tech University School of Law. In 1991, the Center published *The Lawyer as a Professional*, which was edited by Texas Tech University School of Law Dean and Professor of Law Frank Newton—a member of the Center's board of trustees—and Texas Tech University School of Law Associate Professor of Law Timothy Floyd. The book included a series of articles by law professors, judges, and lawyers, as well as the Texas Rules of Disciplinary Procedure and charts on the Texas lawyer discipline system.

In the 1990s, the Center implemented a wide range of initiatives, and, in 1992, it formally moved into the Texas Law Center in Austin.

In January 1994, the Center published the first edition of the book *A Guide to the Basics of Law Practice*. Developed under the leadership of Dean Newton, the book served as the curriculum for the four-hour *A Guide to the Basics of Law Practice* course, which was first offered at all Texas law schools during the 1994 spring semester. The primary audience for the initial course was third-year law students.

In 1996, the Supreme Court of Texas issued an order requiring all Texas lawyers licensed on and after July 1, 1996, to take the *A Guide to the Basics of Law Practice* course.[23]

During the 1990s, the Center offered many educational programs, including *The Ethics Course*, *The Foundations of Legal Ethics*, and *Legal Ethics and the Bottom Line*. The Center published

[22] *Ibid.*

[23] Supreme Court of Texas Order Misc. Docket No. 96-9078 (Mar. 1, 1996), *as amended by* Supreme Court of Texas Orders Misc. Docket Nos. 96-9226 (Oct. 15, 1996) and 12-9020 (Jan. 24, 2012). Name changes to the course are discussed later herein.

a book of opinions of the Texas Committee on Professional Ethics (also known as the Professional Ethics Committee), as well as the periodic newsletter "The Center Sentinel." In 1997, the Center established a website, complete with an extensive collection of legal ethics and professionalism resources. Of particular note, the site included a library of opinions of the Texas Committee on Professional Ethics.

21st Century

In the 21st Century, the Center has continued to expand its ethics and professionalism education and outreach. The Center produces and takes part in a vast number of continuing legal education programs and provides a broad assortment of other educational resources.

The Center's website—legalethicstexas.com—serves as a resource station for those seeking information about legal ethics and professionalism in Texas. Among many other resources, the site features disciplinary rules, articles, historic documents, and a library of educational videos. The current site—which has predictably been overhauled since the version launched in the 1990s—also includes a searchable library of opinions of the Texas Committee on Professional Ethics. Recently, a speaker request page was added to facilitate online requests from those seeking speakers on ethics and professionalism topics.


Justice James A. Baker

In April 2009, the Supreme Court of Texas issued an order changing the name of the required course for newly licensed Texas lawyers to the *Justice James A. Baker Guide to the Basics of Law Practice*, to honor Justice Baker's "contributions to Texas law practice and to The Texas Center for Legal Ethics and Professionalism."[24] And in 2015, the Supreme Court renamed the course the *Justice James A. Baker Guide to Ethics and Professionalism in Texas*.[25] The Center continues to provide this important guide course to newly licensed Texas lawyers.

In 2010, another name change took place, as the organization shortened its name to the Texas Center for Legal Ethics. Around the same time, it began using the tagline "Professionalism in Practice."

Texas Center for LEGAL ETHICS
Professionalism in Practice™

The Center regularly takes part in the State Bar's Annual Meeting—including giving presentations as part of the recurring *Early Morning Ethics* CLE series—and Local Bar Leaders Conference. At the 2025 annual meeting, the Center presented "Your Brain on Ethics – How That Thing Between Your Ears Can Lead You Astray," and at the 2026 annual meeting, the Center presented "Developing Your Professional Conduct Game Plan: Practical Insights from the Texas Center for Legal Ethics."

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[24] Supreme Court of Texas Order Misc. Docket No. 09-9068 (Apr. 27, 2009).

[25] Supreme Court of Texas Order Misc. Docket No. 15-9240 (Nov. 15, 2015).

Ethics to Go, which started as a DVD-based program, has advanced into the Center's featured monthly webinar series, with many episodes later added to the Center's on-demand library. The series focuses on practical ethics and professionalism topics and has included a wide variety of panelists. In addition to covering topics like the disciplinary rules, grievance and legal malpractice prevention, and the Texas Lawyer's Creed, the program has also featured a number of presentations with staff of the State Bar's Texas Lawyers' Assistance Program.

In 2009, the Center established the Chief Justice Jack Pope Professionalism Award to recognize appellate lawyers and judges epitomizing the highest level of professionalism and integrity. Named in honor of one of the Center's founders, the inaugural award was presented to former Chief Justice Pope in 2009. The award continues to be presented at the annual Texas Supreme Court Historical Society John Hemphill Dinner.

In 2018, the Center launched *Ethics Question of the Month*—a recurring column that presents educational questions and answers. The column has appeared in each issue of the *Texas Bar Journal* since September 2018 and has ranked as the *Bar Journal's* second-most frequently read column in the last two readership surveys.[26] The column, which frequently features a hypothetical fact pattern as the basis for a multiple-choice question, is also posted on the Center's website in interactive format.

Reflections

In 1990, Frank Baker described the Center as "a Texas-wide project designed to embody ethics and professionalism in the practice of law, for the good of the public, profession and courts." The description still fits.

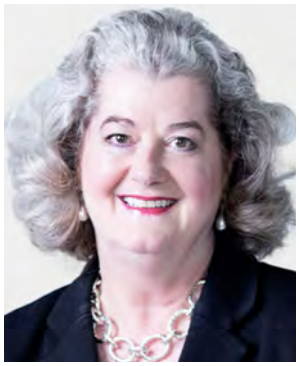
For more than thirty-five years, the Center has worked steadfastly to promote ethics and professionalism for the benefit of the public, the legal profession, and the courts. And these efforts would not have been possible without the strong dedication of the Center's past and present trustees, staff, and volunteers.

Kevin Dubose, a Pope Award recipient and former chair of the Center's board of trustees, said:

> Legal ethics and professionalism should be at the forefront of every lawyer's consciousness on a daily, if not hourly, basis. And yet they are not. Lawyers get busy and get consumed with competing interests — efficiency, their client's interests, their own ego and emotions. There's only one entity that gets up every day focusing exclusively on how to make lawyers more aware of their ethical obligations and

[26] 2023 Texas Bar Journal Readership Survey, https://www.texasbar.com/Content/NavigationMenu/NewsandPublications/TexasBarJournal1/ReadershipSurveys/2023_TBJSurvey_Final.pdf ; 2025 Texas Bar Journal Readership Survey, https://www.texasbar.com/Content/NavigationMenu/NewsandPublications/TexasBarJournal1/ReadershipSurveys/2025_TBJ_ReadershipSurvey.pdf.


Kevin Dubose


Beverly Godbey


Patti Gearhart Turner


Pablo Almaguer

responsibilities and of the value of aspiring to higher levels of professionalism. And that's the Texas Center for Legal Ethics. Not only is it the only thing they do, but they approach education about ethics and professionalism at a high level of proficiency. I've been around a lot of CLE in my career, as a consumer and a creator, and no one consistently does a better job of creating CLE content than the Center.

Beverly Godbey, who previously served as chair of the Center's board of trustees, said:

One of the best ways the Center underscores its commitment to educating lawyers about their ethical obligations is through the *Justice James A. Baker Guide to Ethics and Professionalism in Texas*. As a former Board Chair and frequent speaker in this course, I have witnessed firsthand the impact this four-hour course about the basics of ethics and professionalism has on newly licensed lawyers, both young and more experienced. Participants have told me how much they appreciate the Center's dedication to making sure they know the ethics rules and how to stay out of the disciplinary system. Plus, out-of-state lawyers who take the course routinely comment that no other state cares about these issues as much as Texas, and I wholeheartedly agree.

"Serving on the [board of trustees] of the Texas Center for Legal Ethics was not only an honor, but a professionally enriching experience," said former board chair Patti Gearhart Turner. "The work and the mission of the Texas Center for Legal Ethics is unquestionably valuable for the legal profession as well as for the greater community," she added.

Pablo Almaguer, the current chair of the Center's board of trustees, said, "The Texas Disciplinary Rules of Professional Conduct and the Texas Rules of Disciplinary Procedure are being updated, and the Center serves as a trusted source for Texas attorneys seeking to better understand these changes."

"The Center is a unique and valuable resource in a landscape where application and interpretation of our ethics rules can be complex and nuanced," Almaguer added. "Drawing on its deep historical foundation and decades of dedicated leadership, the Center remains uniquely equipped to guide Texas lawyers through every new chapter of legal ethics."



BRAD JOHNSON *is the Executive Director of the Texas Center for Legal Ethics. He previously served as In-House Legal Counsel, as Disciplinary Rules and Referenda Attorney, and as an Ethics Attorney at the State Bar of Texas. Johnson received his Bachelor of Arts from the University of Texas at Austin and his Doctor of Jurisprudence from Texas Tech University School of Law.*

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Thomas Goode Jones and the Adoption of the First True Code of Legal Ethics*

By Hon. John G. Browning

The Law as a pursuit is not a trade. It is a profession. It ought to signify for its followers a mental and moral setting apart from the multitude, a priesthood of Justice.[1]

I. INTRODUCTION



Thomas Goode Jones

Many lawyers, particularly those practicing in Alabama, know of Thomas Goode Jones' status as one of the fathers of modern legal ethics. However, few know the details of how that came about—how Jones not only wrote the 1887 Code of Ethics of the Alabama Bar (acclaimed as the first formal code of ethics in the United States), but how this code was adopted as the foundation for the American Bar Association's (ABA) first Canons of Ethics in 1908. Virtually all of the thirty-two original ABA Canons derive from one of the fifty-six provisions of the Alabama Code of Ethics, so the debt owed to Judge Jones is an incalculable one. This article will explore Jones' role in creating the Alabama Code of Ethics, and how years later that Code—which by then had been adopted by state bars all over the country—formed the basis of the ABA's Canons of Ethics.

To understand this, first we need to know a bit more about Thomas Goode Jones, and the changes in law practice that were taking place in the late nineteenth and early twentieth centuries. Jones was born in Vineville, Georgia in 1844, and moved to Alabama in 1850. While studying at Virginia Military Institute in 1862, Jones (like many of his classmates) joined the Confederate Army. Legend has it that Jones carried one of the white flags of truce at Appomattox. Jones first "studied law in the winter quarters around Richmond," and after the Civil War continued his studies

* Editor's Note: A modified version of this article was originally published in the Faulkner Law Review, and this is reprinted with permission. *See* Hon. John G. Browning, "Thomas Goode Jones and the Adoption of the First True Code of Legal Ethics in Alabama," 15:1 *Faulkner Law Review* (2023).

[1] John H. Wigmore, "Introduction," *Orrin N. Carter, Ethics of the Legal Profession* (1915), xxi.

"in a night class taught by Chief Justice Abram J. Walker of Alabama."[2] Jones was admitted to practice law in 1866. He and his wife had thirteen children. Jones enjoyed a busy and lucrative law practice (including serving as counsel for the Louisville & Nashville Railroad Company) and served as reporter of the decisions of the Alabama Supreme Court from 1870 to 1884.


President Theodore Roosevelt

Jones was also highly successful as a politician. He was elected to the legislature, serving as speaker from 1886–1888. Soon thereafter, Jones was elected to the first of his two terms as governor of Alabama. Jones also served as president of the Alabama State Bar Association. In 1901, he received a recess appointment from President Theodore Roosevelt to a joint seat on the U.S. District Court for the Middle District of Alabama and the U.S. District Court for the Northern District of Alabama. Judge Jones served honorably until his death on April 28, 1914.

While Jones' career as a lawyer and later as a legislator were heating up, the Alabama legal profession—and indeed, the legal profession throughout the United States—was undergoing a transformation of its own. Even though Mississippi had established the first state bar association in the country, it did not last long, dissolving by 1825.[3] But in the wake of Reconstruction, a movement began nationally toward greater professionalization of the bar, with formal bar examinations and admissions standards, as well as a greater emphasis on formal legal education. As the ABA's Committee on Code of Professional Ethics would later relate, this was a reaction to "the tendency more and more to reduce our high calling to the level of a trade."[4] Going hand in hand with this heightened professionalization was the need to come up with a set of governing rules of ethics. As the Committee noted:

> Once possible, ostracism by professional brethren was sufficient to keep from serious error the practitioner with no fixed ideals of ethical conduct; but now the shyster, the barratrously inclined, the ambulance chaser, the member of the Bar with a system of runners, pursue their nefarious methods with no check save the rope of sand of moral suasion.[5]

II. A CODE FOR ALABAMA

The Alabama State Bar Association was founded in 1878.[6] By the time of its first annual meeting on December 4, 1879, eighty-one Alabama lawyers were members, and by 1881, the membership had increased to 127 lawyers. That year, in his Report of the Committee on Judicial

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[2] Walter B. Jones, "Anecdotes About Governor Thomas G. Jones of Alabama," in *In Memoriam: Thomas Goode Jones, 1844–1914*, "Georgena Bird Jones (1846–1921)," (1956), 9, 21.

[3] Michael De L. Landon, "Another False Start: Mississippi's Second State Bar Association*, 1886–1892*," *The New High Priests: Lawyers in Post-Civil War America*, 187 (Gerald W. Gawalt ed., 1984), 187.

[4] Committee on Code of Professional Ethics, Am. Bar Ass'n 600–01 (1906).

[5] *Ibid.*

[6] In contrast, the State Bar of Texas traces its roots to the July 15, 1882, founding of the Texas Bar Association, with three hundred lawyers in Galveston, Texas.

Administration and Remedial Procedure, chairman Thomas Goode Jones first proposed the adoption of a code of ethics. Noting that "[j]udicial administration would be greatly advanced if there were some organized body of lawyers, armed with legal authority and duty to investigate and prosecute unworthy members,"[7] Jones realized that the Bar's members would need clear ethical guidelines. He added:

> While there are standard works of great eminence and authority upon legal ethics, these are not always accessible. In many instances practices of questionable propriety are thoughtless rather than wilful, and would have been avoided if any short, concise Code of Legal Ethics, stamped with the approval of the Bar, had been in easy reach. Nearly every profession has such a work, which is treasured by its members.[8]

Jones' call for the Alabama bar to provide a code of conduct for its members was immediately heeded. The State Bar Association passed a resolution that a committee should be appointed to study the issue and prepare such a code. However, the committee of three lawyers (with Jones as chairman) was not appointed until the next annual meeting, and its charge was to report a Code of Ethics at the following annual meeting in 1883.[9]

While he had his marching orders, Jones' work on the actual Code of Ethics would be subject to a series of delays. The Code was nowhere near completion by the time of the next annual meeting in 1883, although Jones reported that much "preparatory work" had been done and that he'd sent letters to "many eminent lawyers and judges" seeking suggestions.[10] He promised it would be done by the next annual meeting. Unfortunately, by the time the seventh annual meeting rolled around in 1884, Governor Thomas Hill Watts reported that Jones' service in the legislature necessitated a postponement of any report. At the eighth annual meeting in 1885, Jones was busily engaged in federal court and once again no report was submitted. In 1886, at the ninth annual meeting, Jones (who was then serving as Speaker of the Alabama House of Representatives) was once again unable to report the Code of Ethics, since "a large part of the Code" that he'd written had been "lost from his desk in the House."[11] Since the stenographer "could not re-copy the missing parts in time for consideration," the report on the Code was postponed to the *next* meeting.



Governor Thomas Hill Watts

The Tenth Annual Meeting of the Alabama State Bar Association, held in 1887, was apparently the charm. Jones read the proposed Code, which contained fifty-six sections. By the end of the day, the entirety of the Code—with the exception of four provisions—was adopted without

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[7] Report of the Organization of the First, Second, and Third Annual Meetings of the Alabama State Bar Association, Ala. St. B. Ass'n 235 (Montgomery1882).

[8] *Ibid.*

[9] Proceedings of the Fifth Annual Meeting of the Alabama State Bar Association, Ala. St. B. Ass'n 6 (Montgomery 1883) (the other two committee members, named Richard Orrick Pickett and Daniel Shipman Troy, did not take an active role in the drafting the Code).

[10] Proceedings of the Sixth Annual Meeting of the Alabama State Bar Association, Ala. St. B. Ass'n 21 (Montgomery 1884).

[11] Judge Walter B. Jones, "First Legal Code of Ethics Adopted in the United States," Vol. 8:2 *American Bar Association Journal* (Feb. 1922). Jones' draft had blown off his desk that morning, and out a window.

comment or discussion. Of the four provisions that were discussed, Rule 3 dealt with attempts to exert influence on the court. While one attendee moved to strike it (saying he did not see the necessity for such a rule), another, Edmund Pettus, spoke of the need, saying:

> We are not adopting rules for our guidance here merely because certain practices have become obsolete in the land; we are adopting what we consider a sound Code of Morals for the practice of law.[12]


Senator Edmund Pettus

Jones then added his verbal support, stating:

> The rule does condemn the pointed and marked hospitality sometimes thrust upon judges by attorneys who would not offer such hospitality to the man if he were not a judge . . . It does not prevent any member of the Bar from extending proper courtesies to a judge . . . It is intended to discourage efforts by such practices to gain personal friendship with the judge merely because he is a judge.[13]

The rule was adopted as read. Another section, Rule 5, dealt with attempts to introduce evidence that the lawyer knew was inadmissible. After some discussion on the floor, that rule was adopted as well. It would later go on to be adopted by the ABA as Canon 22 of the First Canons of Ethics—"A lawyer should not offer evidence which he knows the court should reject, in order to get the same before the jury by argument for its admissibility . . ."

Yet another section, Rule 14, which stated that an attorney may decline in a civil cause to conduct a prosecution when the purpose is merely to harass or injure the opposing party or to "work oppression or wrong," was also adopted after a minor change (the "may" was altered to the mandatory "must"). The final section discussed was proposed Rule 20: "An attorney should not conduct his own cause." After some discussion about how anyone acting as his own lawyer had a fool for a client, a Birmingham lawyer moved to strike the proposed rule from the Code, saying "It is one of the American privileges to make a fool of yourself, and it is guaranteed by the Constitution and I don't see anything wrong in it—anything immoral in it."[14] The assemblage agreed, and struck that one provision.

On December 14, 1887, the Alabama State Bar Association made history by embracing the first code of legal ethics ever adopted in the United States. While its membership numbered only 395 of Alabama's 795 lawyers at the time, the Bar ordered 1000 copies of the code and mailed one to every attorney and judge in the state.

III. INFLUENCES AND MOTIVATION

What inspired Thomas Goode Jones, and what motivated him? While little surviving information exists about how Jones wrote the Code, we do know that two of his influences were

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[12] Proceedings of the Tenth Annual Meeting of the Alabama State Bar Association, Ala. St. B. Ass'n (Montgomery 1888).

[13] *Ibid.*

[14] *Ibid.*

David Hoffman and particularly George Sharswood. Hoffman was a lawyer and lecturer at the University of Maryland who published an ambitious guide to legal education, *A Course of Legal Study*, in 1817. It was not uncommon for law professors in the early nineteenth century to publish some version of their lectures. In an 1836 second edition of this book, Hoffman included *Fifty Resolutions in Regard to Professional Deportment*, believed by many scholars to be the first written attempt to provide ethics guidance to American lawyers.[15] Among the concepts Hoffman advocated were civility to other lawyers, responding promptly to correspondence, being faithful to one's clients, and maintaining a lawyer's independent professional judgment.


George Sharswood

An even greater influence on Jones was the work of George Sharswood. Born in Philadelphia in 1810, Sharswood served as a law professor at the University of Pennsylvania from 1850 to 1868, and became Chief Justice of the Pennsylvania Supreme Court in 1879. While he was a sitting judge on a lower court, Sharswood published his work *An Essay on Professional Ethics*.[16] Sharswood's view of legal ethics departed from Hoffman's perspective of a moral responsibility owed by lawyers to society, and called for a more client-focused approach to ethics. Among other issues, Sharswood believed that a lawyer owed his client "[e]ntire devotion to [his] interest . . . warm zeal in the maintenance and defense of his rights, and the exertion of his utmost learning and ability . . ."[17]

Both Hoffman and Sharswood, however, were writing largely for student audiences and, as a result, took a distinctly non-commercial look at law practice. Sharswood in particular declared that "[a] horde of pettifogging, barratrous, custom-seeking, money-making lawyers, is one of the greatest curses with which any state or community can be visited."[18] Jones was undoubtedly influenced by both scholars, but the Alabama Code of Ethics was clearly authored for the benefit of practicing lawyers and so delves more deeply into the economics of practicing law, including fixing fees and attorney advertising. Jones' greatest contribution in the Code was, therefore, not just limited to articulating the concepts of attorney loyalty and candor to the court that he had seen discussed initially by Sharswood, but in grounding his work in issues central to the mundane practice of law. These included the benefits of reducing important agreements with clients to writing (Code of Ethics No. 40); the dangers of negotiating a settlement without first informing the client (Code of Ethics No. 42); and the problems with assuring the client of success in the litigation (Code of Ethics No. 32).

Just like the writings of both Hoffman and Sharswood, the Alabama Code of Ethics had no formal enforcement mechanism. It—like the ABA Canons that would later follow—functioned as evidence of enforceable legal standards and relied on lawyers' concerns for their reputation to induce practitioners to abide by its mandates. In originally advocating for the Code's adoption, Jones himself stated this:

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[15] *See, e.g.*, N. Lee Cooper & Stephen F. Humphreys, "Beyond the Rules: Lawyer Image and the Scope of Professionalism," *Cumberland Law Review* 26, (1995): 923, 927; Max Bloomfield, "David Hoffman and the Shaping of a Republican Legal Culture," *Maryland Law Review* 38, (1979): 673, 674.

[16] George Sharswood, *An Essay on Professional Ethics* (5th ed. Philadelphia 1884).

[17] *Ibid.*, 24.

[18] *Ibid.,* 92.

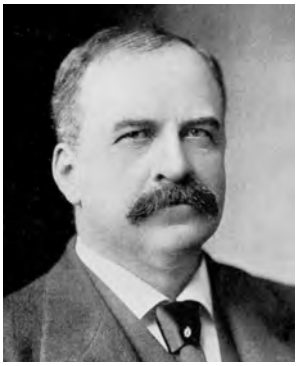
> With such a guide, pointing out in advance the sentiment of the Bar against practices which it condemns, we would find them gradually disappearing; and should any be bold enough to engage in evil practices, the Code would be a ready witness for his condemnation, and carry with it the whole moral power of the profession.[19]

While the influences of scholars like Hoffman and Sharswood can clearly be seen in Jones' Code of Legal Ethics, what motivated a successful lawyer and ambitious politician like Jones to focus his energies on such a project? Why did it take a lawyer from the South to feel such a need for a code of legal ethics? The devastating economic effect of the Civil War and Reconstruction, and the resulting social and political upheaval, had a profound impact on Jones. In a speech to the Alabama State Bar Association in 1883, Jones connected the need for a code of ethics to this post-war disorder:

> It was to be expected that the demoralization resulting from the war, would make itself felt in the legal profession as it did in all other institutions of our land, and while the Alabama Bar for honesty, ability and talent equals that of any State in the Union, it has not yet returned to that state of purity which distinguished it before the war. There are still lawyers whose practices bring reproach upon the profession, and who, not being members of the Association, cannot be reached by any of the rules prescribed for its government.[20]

IV. THE ABA ADOPTS ALABAMA'S CODE

With the turn of the century came renewed calls for reforms in the practice of law. It was the Progressive Era, and leaders of the ABA were imbued with hope and confidence that the moral standards of the population could be improved. The American Medical Association had drafted a revised code of professional ethics in 1903, and the ABA didn't want to be left behind. And there was a national crisis in the public perception of lawyers, exemplified by a 1905 speech by President Theodore Roosevelt excoriating lawyers.[21]



George R. Peck

In 1905, ABA President George R. Peck appointed a five-man committee to consider the feasibility of drafting a code of ethics for the American bar. The committee's plan, in the words of member and U.S. Supreme Court Justice David Brewer, was to prepare "a body of rules, few in number, clear and precise in their provisions, so



Justice David Brewer

[19] Proceedings of the Tenth Annual Meeting of the Alabama State Bar Association, 235.

[20] Proceedings of the Fifth Annual Meeting of the Alabama State Bar Association, 7.

[21] In his remarks at the Alumni Dinner of Harvard University on June 28, 1905, Roosevelt stated "the great lawyer who employs his talent and his learning in the highly remunerative task of enabling a very wealthy client to override or circumvent the law is doing all that in him lies to encourage the growth in this country of a spirit of dumb anger against all laws and of disbelief in their efficacy." Theodore Roosevelt, "Remarks at the Alumni Dinner of Harvard University in Cambridge, Massachusetts," *American Presidency Project*, (June 28, 1905), https://www.presidency.ucsb.edu/documents/remarks-the-alumni-dinner-harvard-university-cambridge-massachusetts.

there can be no excuse for their violation, to be given operative and binding force by legislation or action of the highest courts of the states."[22] When the committee expanded its membership to fourteen in 1906, it included Thomas Goode Jones.

Since its adoption by the Alabama State Bar Association in 1887, Jones' Code of Legal Ethics had been adopted almost in its entirety by Georgia, Virginia, Michigan, Colorado, North Carolina, Wisconsin, West Virginia, Maryland, Kentucky, and Missouri.[23] With Jones' presence on the ABA Committee, it is hardly surprising that the Canons of Ethics that the ABA adopted was closely based on the Alabama Code of Ethics. As the Committee acknowledged in making its final report in 1908, "The foundation of the draft for canons of ethics, herewith submitted, is the code adopted by the Alabama State Bar Association in 1887, and which with but slight modifications has been adopted in eleven other states." Indeed, some of the most striking similarities to the Alabama Code can be found in the Canons governing fixing the amount of a lawyer's fee (Canon 12), attempts to privately influence the court (Canon 3), candor and fairness to the court (Canon 22), advertising (Canon 27), a lawyer's duty to his client (Canon 15), and "upholding the honor of the profession" (Canon 29). After 1908, the fledgling Texas Bar Association would adopt the ABA Canons of Ethics.

V. CONCLUSION

The trend toward professionalization of law practice could not have sustained its momentum without the adoption of a code of legal ethics. In 1910, within two years of the promulgation of the ABA's Canons of Ethics, they had been adopted in twenty-two states. The contributions of Thomas Goode Jones—lawyer, legislator, governor, and federal judge—are many. But in drafting the Alabama Code of Ethics and helping lawyers lead a better professional existence, Jones left the most lasting part of his legacy and realized the truth of an observation he had first made as a young man: "the lawyer who shall frame such a code need ask no greater or more enduring fame."

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[22] Committee on Code of Professional Ethics, Am. B. Ass'n 570 (1908).

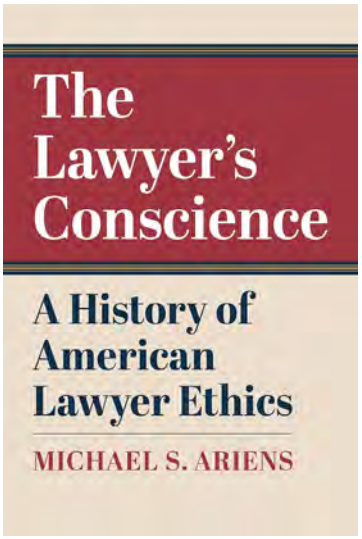
[23] Jones, "First Legal Code of Ethics," 11.

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Book Review — *The Lawyer's Conscience: A History of American Lawyer Ethics*

By Hon. John G. Browning

I teach and write about legal ethics, and it is rare to encounter a book-length effort on the subject devoted to its history in the United States. St. Mary's law professor Michael Ariens' book, *The Lawyer's Conscience: A History of American Lawyer Ethics*, is such a rare achievement. In his meticulously researched and compelling work, Ariens gives us not a dry recitation of historical facts but an enthralling look at the history of how lawyers have imagined themselves and the true nature of their vocation.



The Lawyer's Conscience: A History of American Lawyer Ethics, by Michael S. Ariens (University of Kansas Press, 2022), 400 pages

Ariens begins with an examination of the role of the American lawyer from before the Revolution to the dawn of the Jacksonian era. Here, amidst a description of prominent trials like the defense of the British soldiers arising out of the Boston Massacre, Ariens looks at how misbehaving lawyers managed to continue practicing law despite efforts to remove them from the profession. The author continues with a look at early legal ethics theorist David Hoffman, whose 1817 book, *A Course of Legal Study*, gave an early sense of the mission of "the honorable lawyer." For Hoffman, the role of the "honorable lawyer" was to not merely act to benefit the client's interests, but also "to do what was morally right for society." For Hoffman however, this meant not resorting to pleading "technicalities" like the statute of limitations or employing the "artifices of eloquence" to persuade a jury to render a favorable verdict.

Ariens proceeds to trace the work of other major players, including Pennsylvania judge and law professor George Sharswood. Through Sharswood's antebellum lectures on legal ethics, Ariens charts an evolution from honor to conscience guiding the legal profession. By the time Ariens reaches his discussion of lawyers in the Gilded Age and Thomas Goode Jones' pathbreaking work creating Alabama's code of ethics (adopted after the turn of the century by the ABA), we begin to discern what Ariens calls "the emerging concept of the lawyer as a professional."

Ariens continues through the twentieth century to the ABA's promulgation of the Model Rules of Conduct in 1983. Throughout, he shows—and laments—the movement from the vision of the lawyer with substantial duties to the public entirely apart from client interests to a vision of the lawyer as one whose duties are too strongly linked to and too dependent on narrow client interests. Overall, Ariens yearns for an American legal profession whose ethical aspirations are high and whose members speak in a unified voice about matters beyond the trivial. His book is an impressive and enduring contribution to this ongoing conversation.

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Celebrating 150 Years of the Texas Constitution: 31st Annual John Hemphill Dinner

By Rachel H. Stinson
Photos by Mark Matson

The Texas Supreme Court Historical Society held its 31st Annual Hemphill Dinner on September 10, 2026, at the Four Seasons Hotel in Austin. The evening celebrated the 150th anniversary of the Texas Constitution and honored members of the judiciary.



Photo credit: www.fourseasons.com/austin

Hundreds of distinguished guests gathered before the main event to reconnect with colleagues and members of the judiciary from across Texas. They then moved into the main dining room for dinner and the evening's program.





Justice Evan Young,
Justice Debra Lehrmann,
and Greg Lehrmann.

Andrew Nelson,
Rachel H. Stinson,
James Marrow,
and Marie Jamison.





Warren Harris and
Justice April Farris,
15th Court of Appeals.



Members of Scout Troop 5 from Austin, Texas, presented the colors and led the Pledge of Allegiance.



President Jasmine S. Wynton introduces the evening's program and calls the room to order.

A Toast by Justice Evan Young

The Society's President, Jasmine S. Wynton, introduced a special toast to the Texas Constitution from Justice Evan Young. Justice Young's remarks highlighted the sesquicentennial of the Texas Constitution, adopted on February 15, 1876. He reminded guests that Texas Constitution has endured for 150 years despite more than 75 changes, replacements, and additions, growing from 22,000 words in 1876 to approximately 110,000 words today. Justice Young explained that this growth was in keeping with the original design, which was intended to require "a virtuous and well-informed citizenry that is willing to take on the mantle of true self-government" to ratify and confirm these many changes throughout the years.





Justice Evan Young leads attendees in a toast to honor the Texas Constitution.

Honoring Distinguished Guests

The room honored the judicial attendees as they were introduced. Current Justices of the Supreme Court of Texas in attendance were Chief Justice Jimmy Blacklock, Justice Debra Lehrmann, Justice John Devine, Justice Brett Busby, Justice Jane Bland, Justice Rebeca Aizpuru Huddle, Justice Evan Young, Justice James Sullivan, and the Court's newest member, Justice Kyle Hawkins. Former Justices in attendance included Justice Priscilla Richman, former Chief Justice Nathan Hecht, former Chief Justice Wallace Jefferson, former Chief Justice Thomas Phillips, Justice Scott Brister, Justice Dale Wainwright, Justice Eva Guzman, Justice Paul Green, and Justice Jeff Boyd. Other attendees included jurists from the United States Court of Appeals for the Fifth Circuit, various state and federal trial courts, and leaders from the State Bar of Texas. Society Trustee Kendall Hanks was recognized as this year's Hemphill Dinner Chair and thanked for her hard work on the night's program.



Chief Justice Blacklock remembers the legacy of Justice Ruby Kless Sondock.

Memorial to Justice Ruby Kless Sondock

Attendees also honored Justice Ruby Kless Sondock, who passed away in July at the age of 100. Her extraordinary service to the State of Texas included a pioneering tenure on the Supreme Court of Texas, which began in 1982 when she became the first woman to serve as a full-time Justice. Justice Sondock devoted her life to the law and to the fair and equal administration of justice. Her courage, intellect, and unwavering commitment to excellence inspired generations of Texas lawyers and judges, and her legacy lives on in the many Texans she inspired.

Celebrating the Service of Nadine Schneider

Chief Justice Blacklock recognized Nadine Schneider, the Supreme Court's administrator for thirty-six years. He described Ms. Schneider as "a loyal and faithful servant of the court, the backbone and leader of the court's excellent administrative staff," and as an "ambassador" for the Court. Ms. Schneider also served under former Chief Justices Hecht, Jefferson, and Phillips, and each honored her record of devotion to the people of Texas and the cause of justice.



Chief Justice Blacklock and former Chief Justices Jefferson, Phillips, and Hecht honor the service of Nadine Schneider.

Presentation of 2026 Chief Justice Jack Pope Professionalism Award to Marcie Hogan Greer

Brad Johnson, Executive Director of the Texas Center for Legal Ethics, presented the 2026 Chief Justice Jack Pope Professionalism Award to Marcie Hogan Greer. The Center gives the Award annually to an appellate lawyer or judge who epitomizes the highest level of professionalism and integrity. Chief Justice Jack Pope and two other retired Texas Supreme Court Chief Justices founded the Center in 1989 to promote the values contained in the Texas Lawyer's Creed and to be the leading center of knowledge and resources for ethics and professionalism in Texas. The Award itself honors former Chief Justice Pope, who received the inaugural Award in 2009. Ms. Greer was recognized for her excellence, integrity, and extensive pro bono work. In her remarks, she honored previous recipients, including Chief Justice Pope himself, as well as her father and other family members.



Marcie Hogan Greer accepts the 2026 Chief Justice Jack Pope Professionalism Award.

Recognition of Society Fellows

Warren Harris recognized the Fellows of the Society, highlighting their annual dinner as a wonderful evening of conversation and camaraderie between Fellows and members of the judiciary. Mr. Harris introduced the newest Fellows and thanked all the Fellows for supporting Society projects such as Taming Texas, which places lawyers and judges in seventh-grade classrooms throughout the State and educates the public about the third branch of government and the history of our Supreme Court.

President's Remarks

After a short break for attendees to enjoy their meals, Society President Jasmine Wynton continued the program. President Wynton first recognized the Journal of the Texas Supreme Court Historical Society and the Society's dedication to covering topics such as Texas's unique high court system, early constitutional development, and the efforts of legal pioneers throughout the State. She also acknowledged the Society's support of and participation in other statewide meetings and seminars, including the annual meetings of the Texas State Historical Association and the State Bar of Texas. Among those President Wynton particularly thanked was the Society's Executive Director, Sharon Sandle, who had shared the remarkable story of pioneering attorney Mary Joe Carroll at the 130th Annual Meeting of the Texas State Historical Association in March 2026.

President Wynton also addressed the Society's strategic planning efforts over the past year, where trustees, officers, and stakeholders discussed how to grow membership, strengthen programs, and ensure the Society remains vibrant for the next generation. President Wynton expressed gratitude to the Society's officers, trustees, committee members, fellows, sponsors, authors, and members for their time and support, and she noted the extraordinary efforts of Sharon Sandle and Mary Sue Miller on behalf of the Society.

2026 President's Award — Matthew Kolodoski

Next, President Wynton presented the "President's Award" to Matthew Kolodoski, the Society's Treasurer and current Trustee. President Wynton praised Mr. Kolodoski's spirit of service and his innovations in the Society's public communications, including member communications and public-facing social media. Because of his care and consistency, the Society's online presence has become more effective and impactful. Mr. Kolodoski's enthusiasm, creativity, and team-oriented approach generated creative ideas and thoughtful solutions for the Society, including two outstanding programs at this year's State Bar of Texas Annual Meeting. The first was a reenactment of the landmark 1925 case *W. T. Johnson et al. v. J. M. Darr et al.*, in which Texas saw the historic appointment of the nation's first all-woman state supreme court, which remains the only all-woman Texas Supreme Court to date. Sitting Justices Debra Lehrmann, Jane Bland, and Rebeca Aizpuru Huddle played the roles of Justices Hortense Ward, Ruth V. Brazzil, and Hattie L. Henenberg, while Mark Trachtenberg appeared as counsel for the respondent and Kent Rutter appeared as counsel for the petitioner. The second program was a panel discussion marking the 150th Anniversary of the Texas Constitution, featuring Justice Evan Young and attorney, author, and legal historian Dr. "Bill" William Chriss and moderated by Alia Adkins-Derrick. President Wynton praised these programs and Mr. Kolodoski's efforts as reflecting what the Society does best: making Texas legal history engaging, accessible, and relevant.



President Wynton and Sharon Sandle present the 2026 President's Award to Matthew Kolodoski.

Keynote Program: "Closer to the People"

The keynote program for the evening was a panel discussion featuring the Honorable Rhonda K. Wood, a Justice of the Supreme Court of Arkansas; the Honorable Beth Walker, former Chief Justice of the West Virginia Supreme Court; and former Texas Supreme Court Justice Eva Guzman. Lynne Liberato of Houston moderated the panel.



Lynne Liberato, the Honorable Beth Walker, the Honorable Rhonda K. Wood, and former Texas Supreme Court Justice Eva Guzman.







Liberato opened the panel by observing that each state constitution has made its own contribution to the system of justice in the United States, and the evening would focus on not only on the contributions of the Texas Constitution but also on those of West Virginia and Arkansas to the overall rule of law in the United States.

Justice Wood answered the first question by discussing the differences in the rights and powers reserved to the courts and the people themselves in the United States Constitution and the Arkansas Constitution. One of the more unique features of Arkansas' Constitution is that it contains particular language promising citizens of that state the right to protect property, life, and liberty as well as the right to acquire and protect property and to protect their own life and liberty.

Justice Walker addressed the significance of West Virginia's attention to the overall structure and funding of state government. She explained to attendees that, as of 2017, West Virginia's constitution called for the legislature to fund the state's Supreme Court but gave the legislature no discretion over the Court's spending. Conflict over past expenditures led the West Virginia legislature to impeach the entire West Virginia Supreme Court and then amend the state's constitution to provide legislative oversight of the Court's budget, significantly impacting routine communications and interactions between the two branches.

Justice Guzman addressed the well-known preamble to the Texas Constitution, "humbly invoking the blessings of Almighty God." She emphasized that, in her view, the preamble and similar language reflected the spirit of the framers and the pride and humility with which they sought to ensure that governmental power ultimately remains vested in the people of Texas.

Each panelist agreed that individual state constitutions play an important role in protecting citizens' rights beyond those secured by the United States Constitution, and that each has made independent contributions to American law as a whole.

Justice Walker and Justice Guzman further addressed two related points: first, that many of the most important individual rights in the United States Constitution originated in earlier state constitutions, and second, that state constitutions and state supreme courts offer a critical testing ground for examining the contours of established rights across the country. The usefulness of comparisons to other constitutions in interpretation and advocacy within one's own state was commended, including arguments incorporating other states' understanding of the original public meaning or development of key phrases or rights in one's own state constitution.

In addressing state constitutions before state supreme courts, advocates were reminded to begin with the text itself; to examine the evidence needed, and provided in the record, to support one interpretation over another; and to analyze both public experience and how a particular provision fits within the overall whole. Advocates were also encouraged to emphasize standards and solutions that give state supreme courts a workable test to support their proposed interpretation.

Finally, the panel exhorted attendees to further the rule of law by looking beyond the political objectives of the moment, so that even oft-amended state constitutions offer their citizens some certainty as political trends may shift.

Swearing-in of President Alia L. Adkins-Derrick and Announcement of Inductees into Texas Appellate Hall of Fame



Justice Jane Bland administers the Oath to incoming Society President Alia L. Adkins-Derrick

Justice Jane Bland swore in Alia L. Adkins-Derrick as the Society's incoming President for 2026-2027. President Adkins-Derrick thanked outgoing President Wynton, as well as all the Society's officers, trustees, and members.

President Adkins-Derrick also announced the newest inductees into the Texas Appellate Hall of Fame: Ralph Brock, Lucy Forbes, and former Chief Justice Charles L. Reynolds. Each left an indelible mark on the legal profession that will be remembered and felt for years to come.

Concluding Remarks

In concluding the evening, President Adkins-Derrick reminded attendees that "the power of this Society and its work lies in the way our collective efforts combine to strengthen the public trust in the legal community's protection of and unwavering commitment to truth, fairness, unity, the rule of law, and justice for all."

Next year's annual John Hemphill Dinner is scheduled for Friday, September 10, 2027.

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The *Journal of the Texas Supreme Court Historical Society* welcomes submissions, but the Editorial Board reserves the right to determine what will be published in every issue. The Board does not discriminate based on viewpoint, but does require that an article be scholarly and interesting to the *Journal*'s readership. The *Journal* includes content concerning activities of public figures, including elected judges and justices, but that chronicling should never be construed as an endorsement of a candidate, a party to whom a candidate belongs, or an election initiative. Publication of an article or other item is neither the Society's nor the *Journal*'s endorsement of the views expressed therein.

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2026-27 Membership Upgrades

The following Society members have moved to a higher Membership category since June 1, 2026.

HEMPHILL FELLOW

Hon. Jeff Boyd

GREENHILL FELLOW

Randall Chapman

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2026-27 New Member List

The Society has added 34 new members since June 1, 2026.
Among them are 21 Law Clerks for the Court (*) who will receive
a complimentary one-year membership during their clerkship.

CONTRIBUTING

Michael Kawalek
Sarah Keathley
Hon. Laura Pratt

REGULAR

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Membership Benefits & Application

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- Autographed Complimentary Hardback Copy of Society Publications
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Greenhill Fellow $2,500

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Trustee Membership $1,000

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- Discount on Society Books and Publications
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Contributing Membership $100

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- Personalized Certificate of Society Membership
- All Benefits of Regular Membership

Regular Membership $50

- Receive Quarterly *Journal of the Texas Supreme Court Historical Society*
- Complimentary Commemorative Tasseled Bookmark
- Invitation to Annual Hemphill Dinner and Recognition as Society Member
- Invitation to Society Events and Notice of Society Programs

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The Texas Supreme Court Historical Society conserves the work and lives of the appellate courts of Texas through research, publication, preservation and education. Your membership dues support activities such as maintaining the judicial portrait collection, the ethics symposia, education outreach programs, the Judicial Oral History Project and the Texas Legal Studies Series.

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