

THE TEXAS LAWYER'S CREED

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I. PREAMBLE:

The Texas Supreme Court and the Court of Criminal Appeals explain that the Texas Lawyer's Creed — A Mandate for Professionalism is aspirational in nature, and therefore striving to abide by its rules is a voluntary act of self-discipline to bring back the respect and confidence that this learned profession once inspired. http://www.txethics.org/reference_creed.asp The Courts therefore ask of us practitioners that we abide by the Texas Lawyer's Creed, not because of fear of sanctions, but because we believe it's the right thing to do.

II. INTRODUCTION:

Over the past decade, much has been discussed and written about the decline in legal professionalism and the resulting negative public image of lawyers which was spawned by a few bad apples in the profession. Many reasons for the decline have been espoused including win at all cost attitudes, Rambo litigation practices, and the pressure of a high number of billable hours along with escalating client expectations. Whatever the reason, lawyers are perceived as less "professional" in the eyes of the public. We hope the efforts to overcome that perception through our fellow lawyer's adherence to the ideals of professionalism will be rewarded.

III. THE LEGAL PROFESSION'S RESPONSE TO THE EROSION OF PROFESSIONALISM:

In 1987, in response to discovery abuse and so-called Rambo trial tactics, the Dallas Bar Association implemented its "Lawyer's Creed and Guidelines for Professional Courtesy." The committee diligently responded to the call for the need of professional guidelines for the Dallas legal community, and its product was the first in the state. Several other Texas cities over the past decade have followed with creeds or guidelines, including Houston, Austin, San Antonio, and Corpus Christi, to name a few.

Various courts have also been responsive to the erosion of professionalism. In *Dondi Properties Corp. v. Commerce Savings & Loan Assn.*, 121 F.R.D. 284 (N.D. Tex. 1988), decided on July 14, 1988 (attached as Exhibit "A"), the Federal District Judges in the Northern District, sitting *en banc*, wrote:

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

Dondi, 121 F.R.D.at 286

The *Dondi* court adopted standards designed to end this abusive litigation practice. The Northern Federal District of Texas adopted the Dallas Bar Association's

“Guidelines of Professional Courtesy” within their opinion. In an attempt to provide a mechanism for enforcement of these new guidelines, the *Dondi* court warned:

Attorneys who abide faithfully by the standards that we adopt should have little difficulty conducting themselves as members of a learned profession whose unswerving duty is to the public they serve and to the system of justice in which they practice. Those litigators who persist in viewing themselves solely as combatants, or who perceive that they are retained to win at all costs without regard to fundamental principles of justice, will find that their conduct does not square with practices we expect of them. Malfeasant counsel can expect instead that their conduct will prompt an appropriate response from the court, including the range of sanctions the Fifth Circuit suggests in the Rule 11 context: ‘A warm, friendly discussion on the record, a hard-nosed reprimand in open court, compulsory legal education, monetary sanctions, or other measures appropriate to the circumstances.’

Dondi, 121 F.R.D. at 288, citing *Thomas v. Capital Sec. Servs., Inc.*, 836 F.2d 866, 878 (5th Cir. 1988) (*en banc*). The Northern District adopted the Dallas Bar Association’s guidelines for professional courtesy and lawyer’s creed as standards of litigation conduct for attorneys appearing in civil actions in the Northern District of Texas.

On December 12, 1996, Chief Judge Jerry Buchmeyer of the United States District Court, Northern District of Texas, by Special Order No. 2-36 enacted Rule 13.3 relating to attorneys not admitted to practice in the Northern District. Rule 13.3(b) states:

(b) Application to Appear. Unless exempted by Rule 13.9, an attorney who is not admitted to practice in this Court, who desires to represent a party in a proceeding, and who is eligible pursuant to Rule 13.3(a) to appear, shall apply for admission *pro hac vice*. In an application made in a civil case, the attorney shall affirm in writing that the attorney has read *Dondi Properties Corp. v. Commerce Sav. & Loan Ass’n*, 121 F.R.D. 284 (N.D. Tex. 1988) (*en banc*), and the Local Rules of this Court, and that the attorney will comply with the standards of practice adopted in *Dondi*, and with the Local Rules.

The Texas Supreme Court also responded sternly to the erosion of professionalism among lawyers. On November 7, 1989, the Texas Supreme Court and the Court of Criminal Appeals adopted “The Texas Lawyer’s Creed-A Mandate for Professionalism.” This Lawyer’s Creed and the Orders adopting same are attached as Exhibit “B.” The Texas Lawyer’s Creed contains extensive and precise guidelines governing the conduct of lawyers to their client, each other and the judiciary. The adoption of the Texas Lawyer’s Creed by the Supreme Court of Texas and the Court of Criminal Appeals indicates the high priority which has been placed upon finding a solution to the erosion of professionalism that has permeated the legal community. It is the purpose of this Lawyer’s Creed to be read and followed by the legal community in an attempt to turn back the tide of hard ball and Rambo litigation tactics, which are presently being pursued in the course of litigation.

Finally, the Texas State Bar Association initiated a higher number of hours for the legal ethics/professional responsibility requirement to meet continuing legal education requirements. Effective July 1, 1996, the State Bar raised the legal ethics/professional responsibility requirement from one hour to three hours out of a total of IS hours required for continuing legal education.

IV. JUDICIAL REFERENCES TO THE LAWYER’S CREED:

Numerous bar associations, lawyer’s guilds, and courts have reacted to the erosion of professionalism through the adoption and promulgation of various creeds and professional guidelines. The next area of inquiry is how the courts have applied the

various professional guidelines and creeds. In most cases where professional guidelines and creeds were adopted, the mandates of these creeds were but aspirational. However, some courts have taken the guidelines and creeds from their written word and have made it clear that lawyers should adhere to these professional standards and dictates. These courts, in their opinions, have made references to the Lawyer's Creed and have, in effect, told lawyers to embrace professionalism.

A. Texas State Courts' Application of the Texas Lawyer's Creed:

At last count, the Texas Lawyer's Creed since its adoption in 1989 has been mentioned in 49 reported cases and 12 unreported cases authored by the Texas Supreme Court and various Texas Courts of Appeal, as well as by seventeen Federal District and Circuit Courts. Specifically, the Lawyer's Creed has been mentioned in opinions by the Courts of Appeal for Austin, Dallas, Fort Worth, San Antonio, El Paso, Houston [1st and 14th Dist], Texarkana, Corpus Christi, Amarillo and Waco. The Lawyer's Creed has also been cited as guidance in a Texas Attorney General Opinion. See Tex. Atty Gen. ORD — 579 (1990). Finally, the Texas Lawyer's Creed has been cited by the Federal District of Connecticut, and a Floridian appellate court. See respectively, *Edberg v. Neogen Corp.*, 17 F. Supp.2d. 104 (D. Conn. 1998); *Carnival Corp. v. Beverly*, 744 So.2d 489, 497 (Fla. App. 1 Dist. 1999). Sometimes the Creed has been referred to by a party in its motion before the Court or by the Judges themselves in majority, concurring, or dissenting opinions. The following cases are illustrative of how the Lawyer's Creed has been taken from its written word and applied by the Courts as a means to remind lawyers of their duty of professionalism.

1. *Greathouse v. Charter National Bank-Southwest*, 851 S.W.2d 173 (Tex. 1992)

Justice Doggett felt compelled to write in a concurring opinion of this case in order to bring to the courts' attention to the fact that the Court had delayed too long in rendering their opinion. *Id.* at 178. Noticing that often "justice delayed has been justice denied," Justice Doggett referred the Court to the Texas Lawyer's Creed — A Mandate for Professionalism: "A Judge owes to the public the same 'diligence candor and punctuality' that this Creed demands of lawyers." *Id.*

2. *Delaney v. University of Houston*, 835 S.W.2d 56 (Tex. 1992)

Justice Doggett once again reminded the appellate courts in general and the Houston 14th Court of Appeals specifically that an almost two year delay from the time a hearing was held to the issuance of the court's opinion, was justice denied for a rape victim who had sued the University of Houston. *Id.*, at 61.

3. *Warrillow v. Norrell*, 791 S.W.2d 515 (Tex. App. — Corpus Christi 1989, writ denied)

In this case, an attorney participating in the suit testified as a witness in a bad faith suit against an insurer. The concurring opinion condemned the lawyer's practice of acting as both a witness and advocate for his client. *Id.* at 531. The concurring opinion stated, "Ample justification for preventing this practice from becoming prevalent is found in the need to maintain due respect for the integrity of the legal profession, which is bound to suffer from such conduct." *Id.* In footnote 3, the concurring opinion further noted that the Supreme Court and Court of Criminal Appeals have recently adopted the Texas Lawyer's Creed — A Mandate for Professionalism in response to the growing practice of abuse of the legal system. Continuing in the footnote, the concurrence

added: “These courts urge our profession to rededicate itself to the practice of law ‘so we can restore public confidence in our profession, faithfully serve our clients, and fulfill our responsibility to the legal system.’ The considerable lack of ethical judgment presented in other cases, as well as this one, indicates that this creed appears at a most auspicious time. Neither justice nor our fellow man is served until the principles stated in this creed become the moral fabric that all lawyers wear throughout their personal and professional lives.” *Id.* (citations omitted). Finally, the concurrence recommended that the attorney should be sanctioned by whatever punishment the Texas Supreme Court or the District Grievance Committee found appropriate.

4. *Shaw v. Greater Houston Transportation Company*, 791 S.W.2d 204 (Tex. App. — Corpus Christi 1990, no writ)

The 334th District Court, Harris County Judge had been abusive to the attorneys trying this suit: she had ordered one attorney to “shut up;” had ridiculed one attorney’s years of experience; had ordered one attorney to pay money to her favorite charity to help a personal friend of the judge in need of an organ transplant; had “informed” the Plaintiff that she was sorry that he was represented by his attorney; and had brought her sick child to the courtroom during two days of trial which was very disruptive. *Id.* at 211. On appeal of the case with regard to some “dynamite” charges which Plaintiff complained were coercive and caused the rendition of an improper verdict, the Corpus Christi Court of Appeals paused to call attention to the Texas Lawyer’s Creed and its mandate to be courteous and considerate both for lawyers and for judges. *Id.* at 211-12.

5. *Hanley v. Hanley*, 813 S.W.2d 511 (Tex. App. — Dallas 1991, no writ)

This case arose out of a settlement in a wrongful death suit when the plaintiffs could not agree on how to split the proceeds. *Id.* at 514. The trial court had struck the appellant’s pleadings as a death penalty sanction for a discovery dispute. *Id.* Finding that such a strong sanction was unwarranted by the appellants’ behavior, and that lesser sanctions were available to the trial court before resorting *sua sponte* to the ultimate sanction, the Court of Appeals stated:

As long as trial courts and appellate courts are affirming death penalty cases on ‘abuse of discretion review’ without careful analysis and articulation of requisite *de novo* review of erroneous application of essential legal standards, the Texas Lawyer’s Creed is rendered hollow ... With lawyers’ duties imposed first to *effective* advocacy on the part of our clients, there is great pressure in Texas today to use Rambo tactics in discovery proceedings in order to prevail when there is no other way. *Id.* at 517.

While the Dallas Court of Appeals probably got it wrong, and as pointed out by the concurring opinion, the Court could have reached the same conclusion by resorting to the abuse of discretion review and respecting the doctrine of *stare decisis*, it is interesting to note that the courts acknowledge the contrast and continuous state of flux between advocating for one’s client and recognizing one’s duty of professional courtesy. *Id.* at 524.

However, the authors would submit that one would do better in recognizing that, as it is evident by even a cursory reading of the Texas Lawyer’s Creed, harmony between advocacy and professional courtesy is not only possible but imperative for *effective* advocacy.

6. *Braden v. South Main Bank*, 837 S.W.2d 733 (Tex. App. Houston [14th Dist] 1992, writ denied); *Cert. Denied, Shulze v. South Main Bank*, 508 U.S. 908, 113 S.Ct. 2337 (1993)

In this case, the trial court had imposed monetary sanctions on Plaintiff and ordered his attorney to do ten hours of community service because the attorney had responded to interrogatories by making frivolous objections prompting a motion to compel by Defendant's attorney. *Id.* at 735-36. After the rendition of the trial judgment, Plaintiff appealed the sanctions citing to the Texas Lawyer's Creed, and stated that his attorney would have violated his duties to his client had he not objected zealously to the interrogatories. *Id.* at 737. The 14th Court of Appeals, recognizing that such distortion of the meaning of the Rules is unwarranted, remarked that the Texas Disciplinary Rules (and the Texas Lawyer's Creed) do not authorize an attorney to make frivolous and harassing objections to discovery requests, so much so that such conduct is sanctionable under Tex. R. Civ. P. 215. *Id.*

7. *Gomez v. The State Bar of Texas*, 856 S.W.2d 804 (Tex. App. — Austin 1993; reversed and remanded 891 S.W.2d 243 (Tex. 1994)

Plaintiffs brought a class action suit on behalf of all indigent people which were denied legal services requesting injunctive and declaratory relief against the State Bar of Texas for not implementing a mandatory program making free legal services available to the indigent *Id.* at 806-807. Plaintiffs cited, among others to the Texas Lawyer's Creed Art. I (2) and (3) which state: "(2) I am responsible to assure that all persons have access to competent representation regardless of wealth or position in life; (3) I commit myself to an adequate and effective pro bono program." *Id.* at 807. While the Austin Court of Appeals found that the Texas Courts had jurisdiction over the claims, (at 815) the Texas Supreme Court reversed and remanded. 891 S.W.2d 243,246-47 (Tex. 1994).

8. *Union City Body Co., Inc. v. Ramirez*, 911 S.W.2d 196 (Tex. App. — San Antonio 1995, no writ)

In this case, a defendant was not served with a motion for severance until the morning of the trial, and the motion had never been set for a hearing. The majority noted that failing to serve motions or pleadings in the manner prescribed by Texas Rules of Civil Procedure 21 and 21a violates accepted and customary rules of procedure. They continued and stated, "There is no question that the spirit, if not the letter of the Texas Rules of Civil Procedure requires motions of any kind to be in writing and contain a certificate of counsel that a copy was either mailed or delivered to opposing counsel." *Id.* at 200. The majority then cited as an example, "Texas Lawyer's Creed--A Mandate for Professionalism III, 7 ("I will not serve motions or pleadings in any manner that unfairly limits another party's opportunity to respond.')." *Id.* at 201. The Court went on to say: "We do not invite or encourage attorneys to surprise one another with an onslaught of last-minute motions, pleadings, or briefs, perhaps aimed at some pre-trial tactical advantage. To do so, puts opposing counsel, not to mention the trial court in a precarious position." *Id.* However, the majority found that the defendant had waived any complaint.

The concurring opinion, disagreeing with the majority's finding of a waiver, noted that, "it is this court's responsibility to enforce the Creed through the court's 'inherent powers and rules already in existence' 'when necessary.'" *Id.* at 210 (citations omitted.) The concurrence also stated that, "the Creed has significance as a standard of conduct that supplements the rules and fills the gap between the procedurally permissible and

the professionally acceptable.” *Id.* Finally, the concurring opinion noted: “As a realistic matter, no effort to improve the conduct of the legal profession is going to succeed without the help — ideally, the enthusiastic help — of the judges.” *Id.* (citations omitted). Here, the Court was able to utilize the Creed to warn the legal profession that the Court will not tolerate unprofessional actions to gain a pre-trial tactical advantage.

9. *Byas v. State*, 906 S.W.2d 86 (Tex. App. — Fort Worth 1995, no writ)

During the trial of this case, the prosecutor referred to defense counsel as a “slick attorney.” On appeal, the Court, in analyzing whether this was an improper comment, stated that the prosecutor’s comment about defense counsel was irrelevant to the issue of guilt or innocence and that it was an unwarranted personal attack which is inappropriate conduct in any court in Texas. *Id.* at 87. The Court further stated, “we believe that such unwarranted personal attacks on opposing counsel in court not only provide a disservice to our citizens, but are demeaning to our profession and should be condemned.” *Id.* at 88. The Court in footnote 1 then cited to the Texas Lawyer’s Creed and its order of adoption for the proposition that “Compliance with the rules depends primarily upon understanding and voluntary compliance, secondarily upon re-enforcement by peer pressure and public opinion, and finally when necessary by enforcement by the courts through their inherent powers and rules already in existence.”

The Court continued and found that even though there was sufficient evidence to uphold the appellant’s conviction, the error was not harmless beyond a reasonable doubt and if they were to so find it was harmless, it would encourage the state to act in such a manner again. *Id.* at 88. The Fort Worth Court was particularly upset because in eight prior opinions, lawyers had been cited for improper attacks on the character of opposing counsel. The Court, in this case, was able to enforce the Creed through its inherent powers in order to make the point that attacks on the character of opposing counsel will not be tolerated.

10. *Hamill v. Level*, 900 S.W.2d 457 (Tex. App. — Fort Worth 1995), *reversed*, 917 S.W.2d 15 (Tex. 1996)

In this case, the plaintiff’s attorney offered to pay \$200.00 to the defense attorney for his time spent in filing a motion to compel because the plaintiff’s attorney had not responded to defendant’s discovery request for three to four months. The defendant’s counsel agreed. However, plaintiff’s attorney never paid the self-imposed fine and never responded to the discovery. The suit was dismissed with prejudice. The plaintiff appealed the death penalty sanction and for being overruled in seeking to reinstate the case.

The Fort Worth Court, in its analysis, noted that there was no lesser sanction available. The plaintiff’s counsel had once self-sanctioned himself by offering to pay \$200.00 to the defendant’s counsel and then never did pay or respond to the discovery. The Court then cited to the Texas Lawyer’s Creed and stated, “An attorney’s own word is at least as sacrosanct as a court order to enforce compliance.” *Id.* at 464, 465. The portion of the Creed referenced by the court in footnote 5 was, “My word is my bond.” Therefore, the attorney, having broken his word, in effect violated a court order and exhibited that a lesser sanction, other than striking the pleadings, would not suffice. The Supreme Court later reversed, holding the sanction of dismissal to be too severe. However, the Appellate Court was able to utilize the Lawyer’s Creed as a means to impress upon the lawyer in this case and all lawyers reading the opinion the importance that a lawyer’s word is his or her bond.

11. *Washington v. McMillan*, 898 S.W.2d 392 (Tex. App.—San Antonio 1995, no writ)

In this case, the defendant filed a motion for summary judgment and served plaintiff in compliance with the rules. However, the motion never reached the plaintiff's attorney's desk or his secretary's desk because the motion was accidentally misrouted. Therefore, the plaintiff's attorney did not respond to the motion and failed to appear at the summary judgment hearing. The defendant was granted summary judgment because there was no controverting proof. The plaintiff moved for a new trial, but it was denied.

On appeal, the San Antonio Court noted that defendant's counsel and the trial court proceeded with the summary judgment hearing even though the plaintiff's counsel wasn't present. *Id.* at 394. In footnote 1, the Court stated that the record did not indicate that any attempt was made to contact the plaintiff's counsel prior to the hearing. The Court added that since no attempt to contact the plaintiff's counsel was made, they would remind defendant's counsel that "Rule 11 of the Texas Lawyer's Creed provides that a Texas attorney 'will not take advantage, by causing any default or dismissal to be rendered, when [he or she] know[s] the identity of an opposing counsel, without first inquiring about that counsel's intention to proceed.'" *Id.* at 396. The Court also stated that they would also like to take "this opportunity to remind trial judges that they are authorized to enforce Rule 11 [Texas Lawyer's Creed Section III] through their inherent powers and rules already in existence." *Id.* The Court reversed and remanded, allowing for a new trial. The Appellate Court, in this case, not only utilized the Lawyer's Creed but also sent a message to the trial court to use its inherent powers to uphold the Creed's mandates.

12. *Owens v. Neely*, 866 S.W.2d 716 (Tex. App. — Houston [14th Dist.] 1993, writ denied)

In this case, an attorney filed suit against a former client to collect fees owed to him for legal services provided. The clients filed an answer in the wrong action and the attorney took a default judgment. The clients filed a motion for new trial, and it was denied and the decision was appealed.

On appeal, the Court found that the clients met the *Craddock* test for a new trial and added that *equity* also favored a new trial. The attorney had filed the motion for default judgment before the defendant's answer was due and alleged in the motion that the defendants had not filed an answer. Also, the attorney had not waited 10 days from the date of the return being on file in order to file the motion for default judgment. The Court noted that these actions by themselves were unprofessional, but were further compounded by the fact that the attorney "knew that the [clients] were represented by counsel and failed to notify their counsel of the hearing on his motion for default judgment." *Id.* at 720.

In footnote 2 of the opinion, the Court states: "In our opinion, [counsel] has behaved unethically in this proceeding. He deliberately sought a default judgment against parties he knew were represented by an attorney and who had filed an answer under the wrong cause number by mistake. He violated the Texas Lawyer's Creed — A Mandate for Professionalism, which was adopted by our supreme court on November 7, 1989. Specifically, the creed provides that a lawyer will 'not take advantage, by causing any default or dismissal to be rendered when [he or she knows] the identity of an opposing counsel, without first inquiring about that counsel's intention to proceed.'" *Id.* (citations omitted). The Court reversed and remanded for a new trial.

13. *Delta Air Lines v. Cooke*, 908 S.W.2d 632 (Tex. App. — Waco 1995, *Mand. Mot. Dism., improvidently granted*)

In a case where a law firm which had in the past represented Delta was allowed to represent a party against Delta by benefiting from a loophole in the Texas Disciplinary Rules of Professional Conduct, Justice Vance voiced his dissent and reminded the Court and the parties that the Texas Lawyer's Creed dared to go above the minimum standards actually providing that: "Professionalism requires more than merely avoiding the violation of laws and rules." *Id* at 634 {*Citing to the Texas Lawyers Creed — A Mandate for Professionalism* (1989)}, and continued:

"The desire for respect and confidence by lawyers from the public should provide the members of our profession with the necessary incentive to attain the highest degree of ethical and professional conduct. These rules are primarily aspirational. Compliance with the rules depends primarily upon understanding and voluntary compliance, secondarily upon re-enforcement by peer pressure and public opinion, and finally *when necessary by enforcement by the courts through their inherent powers and rules already in existence.*" *Id* at 635. (*Citing to Order Adopting the Texas Lawyers Creed — A mandate for Professionalism*, 783-84 S.W.2d XXXIII (Adopted November 7, 1989)(*Emphasis added in the Dissent*).

14. *Emmons v. Purser*, 973 S.W.2d 696 (Tex. App. — Austin 1998, *no pet.*)

In this case an attorney vigorously protested against another attorney for scheduling a deposition without first attempting to schedule it by agreement with the deposed party pursuant to the Texas Lawyer's Creed Art. III(14): "I will not arbitrarily schedule a deposition, court appearance, or hearing until a good faith effort has been made to schedule it by agreement." *Id.* at 698; FN 1.

15. *Continental Carbon Company v. Sea-Land Service, Inc.*, 27 S.W.3d 184 (Tex. App. — Dallas 2000, *pet. denied*)

Continental was sued on a sworn account *Id.* at 186. The attorney for Continental obtained an extension of time to file an answer, but Continental never answered. *Id.* at 187. The Attorney for Sea-Land took a default judgment against Continental, which moved for new trial protesting that taking the default judgment was against the Texas Lawyer's Creed. *Id.* at 186-88. The Dallas Court of Appeals instead found that the Texas Lawyer's Creed was aspirational, not mandatory, and it had not been violated because Sea-Land was not required to give Continental notice of its intent to take a default judgment *Id* at 189-190.

16. *Checker Bag Company v. Washington*, 27 S.W.3d 625 (Tex. App. — Waco 2000, *pet. denied*)

In this case the Waco Court of Appeals chastised the Plaintiffs Attorney for insinuating that Checker Bag's Attorney had tampered with the evidence. *Id.* at 643. The Court stated that attacks and accusations against opposing counsel are prohibited and are generally considered incurable, and cited to several sources including several Texas cases, the TEX. DISCIPLINARY R. PROF. CONDUCT 3.04(c), and the Texas Lawyer's Creed — A Mandate for Professionalism, Art. III(10) (Adopted November 7, 1989). *Id.*

17. *In Re Hasbro, Inc.*, 97 S.W.3d 894 (Tex. App. — Dallas 2003, no pet.)

Hasbro filed a Petition for Writ of Mandamus in the Fifth Court of Appeals to compel the Dallas County 116th Judicial District Court's trial judge to vacate his order, and swore to the fact that the trial judge had given to the opposing party certain privileged documents which had been produced to him for his in camera review, without affording Hasbro's attorneys the opportunity to be heard. *Id.* at *4-5. The Court of Appeals issued an emergency stay ordering that the documents in question could not be used by any party until further order. *Id.* at *5-6.

The real party in interest responded to the petition by revealing that indeed the trial court had held hearings before ordering production of the documents in question and Hasbro's attorneys had participated. *Id.* at *6-10. The real party in interest moved for sanctions against Hasbro under Tex. R. App. P. 52.11. *Id.* at *9-10.

The Fifth Court of Appeals cited to the Texas Lawyers' Creed, the Texas Disciplinary Rules of Professional Conduct, and stated:

The Texas Supreme Court has also adopted the Texas Lawyer's Creed, an aspirational Creed setting goals and giving directions for lawyer's conduct. We refer to the Creed as another example of what conduct is expected of counsel and recognize that it is not a binding rule on which we base our decision. The Creed is a clear directive about how lawyers are to conduct themselves in respect to the legal system, the courts, clients and other lawyers. It is in contrast to the disciplinary rules which tend to establish the lowest acceptable level of lawyer behavior against which lawyers are to be measured for discipline by the State Bar of Texas. The Creed instructs that lawyers and judges owe to each other, among other things, candor. Most importantly, the Creed instructs that lawyers should be proud of their profession and conduct themselves in such a way to reflect that pride when it states 'I am passionately proud of my profession. Therefore my word is my bond.' *Id.* at *10.

The Court also ordered that Hasbro pay the sum of \$2,500.00 to the Dallas Bar Association's Campaign for Equal Access to Justice. *Id.* at *16.

18. *Aguilar v. Anderson*, 855 S.W.2d 799 (Tex. App. — El Paso 1993, writ denied)

In the Concurrent and Dissenting Opinion by Justice Barajas, the Justice expressed its dismay that a judge who had personally solicited funds from an attorney who had made an appearance in a case for his reelection campaign was allowed to remain as judge in a case after his impartiality had been challenged in a motion to recuse. *Id.*, at 808-809. Citing among others to the Texas Lawyer's Creed — A Mandate for Professionalism, Justice Barajas lamented that the appearance itself of partiality was enough for the judge to recuse himself or the motion to be granted. *Id.* at 814.

As shown by the following case, the Appellate Courts did not limit themselves to reminding lawyers and judges of their ethical and professional duties under the Texas Lawyer's Creed.

19. *Gleason v. Isbell*, 145 S.W.3d 354 (Tex. App. — Houston [14th Dist] 2004, no pet.)

In this case, the Houston Court of Appeals for the 14th Judicial District discussed the responsibility of pro se litigants to refrain from using abusive tactics in their dealings with the courts, counsel and other participants in the legal system, as well as the courts' duty to maintain and defend the decorum of the courts. *Id.* The Court reasoned that

while the Texas Lawyer's Creed and Texas Disciplinary Rules of Professional Conduct may have not applied to pro se litigants, they still needed to act with civility and respect for the decorum of the Court *Id.*, at 357-58 (citing *Mansfield State Bank v. Cohn*, 573 S.W.2d 181, 184-85 (Tex. 1978).

20. *Dolgenercorp of Texas, Inc. v. Lerma*, 2009 WL 1901636 (Tex. 2009)

The Texas Supreme Court reversed and remanded for a new trial a case in which a post-answer default judgment was entered against a party after its counsel failed to appear for trial because counsel was in a preferential trial setting in another county. Citing the Texas Lawyer's Creed and the Code of Judicial Conduct, the Supreme Court stated that "this record compels us to note that judges and lawyers should, and in most instances do, extend common and professional courtesies to other judges and lawyers. Here, despite attempts by other judges to contact the trial judge and both Lerma's counsel and the trial judge being aware that Dollar General's counsel was in trial elsewhere, judgment was entered against a party that by neither word nor deed exhibited intention to abandon or frustrate the proceedings. It is a credit to the trial bench and bar that this type of record rarely ends up before appellate courts." *Id.* at *8 (internal citations omitted).

21. *Twist v. McAllen National Bank*, 248 S.W.3d 351 (Tex.App. — Corpus Christi 2007, orig. proceeding)

The Court denied a mandamus petition and granted sanctions against counsel after counsel misquoted and mischaracterized a Supreme Court opinion and failed to cite and analyze the law governing critical points in counsel's argument. *Id.* at 367. The Court relied, in part, upon the portion of the Texas Lawyer's Creed providing that "I am passionately proud of my profession. Therefore, 'My word is my bond.'" *Id.* at 365.

B. NORTHERN DISTRICT OF TEXAS CASES FOLLOWING THE GUIDELINES SET FORTH IN *DONDI PROPERTIES CORP. V. COMMERCE SAVINGS & LOAN ASSN.*, 121 F.R.D. 284 (N.D. TEX. 1988)

As discussed earlier, the Northern District of Texas, sitting en banc, adopted certain of the Dallas Bar Association's Guidelines for Professional Courtesy and Lawyer's Creed as standards of litigation conduct for attorneys in civil actions in the Northern District of Texas. Since adopting these rules, the Northern District has on occasion cited the *Dondi* opinion to admonish lawyers to adhere to these standards. The following are some examples:

1. *Lelsz v. Kavanagh*, 137 F.R.D. 646 (N.D. Tex. 1991)

In this case, the Northern District of Texas applied the *Dondi* standards by directing that an Assistant AG be removed from further participation in the case as a sanction because the Court found that the counsel had repeatedly violated the standards of attorney conduct adopted in *Dondi*. In numerous court orders spanning a five month period leading up to the removal, the Court had "repeatedly chastised defendant's counsel and issued warnings regarding conduct violative of the Court's decision in *Dondi Properties Corp. v. Commerce Savings & Loan Assoc'n.*, 121 F.R.D. 284 (N.D. Tex. 1988) (en banc)." *Id.* at 648. "Despite these warnings, the Assistant AG persisted in using litigation tactics that prejudiced the rights of her adversaries and undermined the administration of justice in this court." *Id.*

The Court noted that the counsel's conduct in this litigation over the past several months had been characterized by *ad hominem* attacks on counsel representing Plaintiffs; motions filed in bad faith; a lack of candor with the court; last-minute "drop everything" filings of motions requiring immediate action by the court and preventing responses by her opponents; and obstructionist conduct that has wasted the resources of the court's expert. *Id.* As a result of this pattern of conduct, which was violative of the ethical standards adopted by this Court in *Dondi*, the Court removed the Assistant AG from further participation in the litigation.

2. *Dubose v. Brady*, 757 F.Supp. 774 (N.D. Tex. 1991)

Here, a pro se plaintiff's conduct "demonstrated a blatant pattern of repeated acts of disobedience of this court's rulings." *Id.* at 778. *Dubose* twice sought to reintroduce claims previously dismissed by the order of two separate judges of the court; she refused to abide by the conference requirement; she deceitfully styled her motions as "requests" in an attempt to avoid the conference requirement; she continued to claim entitlement to a jury trial despite the court's order in which her jury demand was stricken as impermissible; she represented her status as a litigant *in forma pauperis*, in order to obtain free transcripts, when in reality she had no authorization to so proceed; she willfully refused to pay a sanction at a time when she was able to do so. *Id.*

The Court found that the, "manifest record of abusive litigation practices, and disrespectful, deceitful and contumacious conduct will not be tolerated by this court." *Id.* At this point in the opinion, the Court cited *Dondi* to illustrate that this type of conduct will not be permitted in the Northern District of Texas. As a result, the Court dismissed the plaintiff's case with prejudice.

3. *FDIC v. Cheng*, 1992 WL 420877 (N.D. Tex. 1992)

In this unreported opinion, the court found that one of the defendant's attorney's had exhibited a lack of candor toward counsel for another defendant and toward the court as well. The court cited to the *Dondi* opinion for the proposition that the Northern District has articulated standards of conduct for attorneys appearing in the Northern District of Texas including, among attorneys, duties of professional integrity and cooperation, and, to the judiciary, candor, diligence and utmost respect. Further, the court noted that the conduct of an attorney in this district, towards the court and towards each other, must be at all times characterized by honesty and fair play. *Id.* at *3.

The court acknowledged that counsel had diligently pursued the best interest of his client in this case. However, the court further found that counsel had offended both the letter and the spirit of the *Dondi* standards. *Id.* at *4. The court noted that according to *Dondi*, the proper responses by the court to a violation of the district's standards of litigation behavior include a range of sanctions suggested by the 5th Circuit, from admonishment or required legal education, to monetary sanctions or dismissal. Although finding neither dismissal nor disqualification of counsel was warranted in this case, the court stated that it did not treat lightly counsel's undisputed misconduct in showing a lack of candor to the court. *Id.* at *6. Therefore, the court reprimanded counsel and ordered that counsel bear a portion of the reasonable expenses and attorney's fees associated with the necessity of filing the motion to dismiss and disqualify. *Id.*

4. *Brown v. Bandai America, Inc. et al*, 2002 US Dist. LEXIS 8664 (N.D. Tex. 2002)

Brown sued Bandai for copyright infringement of certain cartoon characters by the name of “Bone Masters” that Brown had rights upon. *Id.* at *2. Because Bandai was a foreign corporation, Brown sought to serve Defendant through the Secretary of State, which in turn served the corporation in Tokyo. *Id.* at *3.

Rather than challenging personal jurisdiction, Bandai’s attorney wrote a letter to Brown’s attorney stating that because the service of process was defective under the Hague Convention, Bandai did not need to answer and could collaterally attack any default judgment against it. *Id.* at *4. About six weeks after receiving the letter, Brown’s Attorney warned Bandai’s attorney that he would “move shortly for entry of default judgment” and filed a motion the very next day. *Id.* at *8-18. Bandai moved to set aside the default judgment, which was granted. *Id.* at*20.

In granting Bandai’s motion, Magistrate Judge Kaplan found that Brown’s attorney “violated the spirit, if not the letter” of the Texas Lawyer’s Creed Article III Section 11 by not allowing enough time to Defendant’s counsel to manifest her intention to avoid the default judgment by responding. *Id.* at * 18.

C. FEDERAL CASES APPLYING TEXAS LAWYER’S CREED:

Besides the Northern District of Texas, other federal courts including the Fifth Circuit, have applied the Texas Lawyer’s Creed. The following cases are illustrative:

1. *McLeod, Alexander, Powel & Apffel, P.C. v. Quarks*, 894 F.2d 1482 (5th Cir. 1990)

In this case, as a discovery sanction, the United States District Court for the Southern District of Texas struck the defendant’s pleadings and entered a default judgment for the plaintiffs. The defendant had summarily objected to discovery, been ordered to comply with the requests, been served with discovery again and once again failed to answer.

The Fifth Circuit ruled that it was not an abuse of discretion to strike the pleadings and noted that the defendant’s attorney’s actions were common examples of Rambo tactics that have brought disrepute upon attorneys in the legal system. *Id.* at 1486. The court then noted that the Supreme Court of Texas and the Texas Court of Criminal Appeals had recently promulgated and adopted the Texas Lawyer’s Creed — A Mandate for Professionalism, setting forth standards for the conduct of attorneys in the state courts of Texas. The Court then quoted Texas Lawyer’s Creed Art. III. (17) as follows: “I will comply with all reasonable discovery requests. I will not resist discovery requests which are not objectionable. I will not make objections nor give instruction to a witness for the purpose of delaying or obstructing the discovery process. I will encourage witnesses to respond to all deposition questions which are reasonably understandable. I will neither encourage nor permit my witness to quibble about words where their meaning is reasonably clear.” *Id.* at 1487.

Finally, the Court added:

While this court has not yet formally adopted a similar creed, we commend the efforts of Texas’ highest courts to instill a greater sense of professionalism among attorneys. Certainly, the spirit of the Federal Rules of Civil Procedure is served by adherence to similar principles of professionalism and civility. We easily conclude that the conduct of [defendant] and his counsel in the instant case did not satisfy that standard and that the sanction of dismissal was appropriate ... We can ill afford to permit litigants to waste scarce court resources with disingenuous or frivolous arguments and motions asserted purely to hinder and delay the efficient operation of justice.

2. *EEOC v. Chemtech Intl. Corp.*, 1995 WL 608355 (S.D. Tex. 1995)

This case is an unreported opinion by the United States District Court for the Southern District of Texas, Houston Division. In this opinion, the Court addresses nine motions which were pending before the Court. In footnote 1, the Court states, Although less than one year old, a total of 36 motions have already been filed in this case, not one of which was unopposed. This record suggests an extraordinary level of needless contentiousness. Counsel are advised to review and pay heed to the Houston Bar Association's 'Professionalism: A Lawyer's Mandate,' and the Texas Lawyer's Creed — A Mandate for Professionalism, published by the State Bar of Texas and endorsed by the United States District Court for the Southern District of Texas.

3. *Horner v. Rowan Co., Inc.*, 153 F.R.D. 597 (S.D. Tex. 1994)

In this case, defense counsel purposely misled opposing counsel in order to orchestrate questionable ex parte interviews with the opposing party's treating physician. The Southern District Court of Texas, Galveston Division, found that, "This type of deceptive and unethical activity constitutes bad faith and will never be condoned in this judicial division." *Id.* at 602. The Court then cited the Texas Lawyer's Creed wherein, "The highest courts of Texas commanded that 'the conduct of a lawyer should be characterized at all times by honesty, candor and fairness.'" *Id.* at 603. The Court continued to say, "Every lawyer owes a solemn duty to conduct himself so as to reflect credit on the legal profession and inspire the confidence, respect and trust of his clients and of the public and to strive to avoid not only professional impropriety but the mere appearance of impropriety." *Id.* (citation omitted). Finally, the District Court invoked its inherent power to assess attorney's fees and appropriate expenses as a sanction for the bad faith conduct of defendant's counsel based on the Texas Lawyer's Creed and the Texas Code of Professional Responsibility.

4. *Exxon Chemical Patents, Inc. v. Lubrizol Corp.*, 131 F.R.D. 668 (S.D. Tex. 1990)

This is an opinion addressing multiple discovery motions filed in a patent infringement action. At one point in the opinion, the Southern District Court, Houston Division, in regard to a party's motion to compel the completion of a deposition, stated that the parties shall agree on the time, date, and place of the deposition and notify the Court in writing of such information. *Id.* at 674. The Court then stated, "Counsel are admonished that their failure to comply with the Texas Lawyer's Creed — A Mandate for Professionalism promulgated by the Supreme Court of Texas and the Texas Court of Criminal Appeals and adopted by this Court *will* result in monetary sanctions being imposed against counsel individually." *Id.*

5. *Bullard v. Chrysler Corp.*, 925 F.Supp. 1180 (E.D.Tex. 1996)

Plaintiff was injured when her airbag deployed in a vehicle accident exposing her to Sodium Azide. *Id.* at 1182. She was represented by two attorneys, one of which, by the name of Tracy, had considerable experience in representing plaintiffs against automobile manufacturers. *Id.* Less than two months before trial, Tracy moved to withdraw from the case stating that there was a conflict, but that his client was not being prejudiced. *Id.* at 1183. The Court granted the motion at first, but subsequently received Plaintiffs Response to her Attorney's motion to withdraw alleging that indeed she was

being prejudiced. *Id.* The Court set aside its order and ordered Tracy to appear and show cause why he should not be sanctioned for violating Fed.R.Civ.P. 11(b)(1) and (3).

At the show cause hearing it emerged that the conflict was due to Chrysler's attorneys threatening that all other cases that Tracy had against Chrysler through other clients would never settle, so that he would have had to see each case through to trial, making his profit margin smaller, than if he had been able to settle those claims. *Id.*

The Court, referring to Article II of the Texas Lawyer's Creed as well as to the Texas Disciplinary Rules of Professional Conduct, strongly chastised Tracy for owing more allegiance to Chrysler as an opponent than to his own clients, for his shifty and evasive demeanor and appearance, and for his lack of candor in falsely representing to the Court that his client would not be prejudiced. *Id.* at 1184-88. The Court imposed sanctions as follows: payment of a fine of \$2,500 to the Court, a public reprimand, ten hours of Ethics Continuing Legal Education in addition to the hours already imposed by the State Bar of Texas, and finally referred the attorney to the Texas State Bar as best equipped to deal with the attorney's conduct. *Id.* at 1191.

6. *In Re Cash Media Systems, Inc.*, 326 B.R. 655, (S.D. Tex. Bankr. 2005)

In this case an attorney who had been placed on a probated suspension for 18 months by the 192nd District Court, Dallas County and ordered not to sign any pleadings, as well as not practice in any bankruptcy court unless associated with a bankruptcy law specialist (see *Commission for Lawyer Discipline v. McIntyre*, Cause Number 03-07352 *aff'd* 169 S.W.2d 803 (Tex. App. — Dallas, 2005), represented a party before the United States Bankruptcy Court for the Southern District of Texas. *Cash Media Systems*, at 659. He failed to associate himself with a specialist and in fact signed several motions and other documents before the Court. *Id.*, at 660-62, 667-69. Additionally, he had failed to request leave to practice in the Southern District of Texas in contravention to the Local Rules of Court. *Id.* The Court reminded him sternly of his duty of candor and honesty before the court under the Texas Lawyer's creed and the Texas Disciplinary Rules of Professional Conduct 8.04(a)(4) and sanctioned him to pay \$11,290.05 to the other parties in the bankruptcy suit *Id.*, at 671.

7. *Kuzmin v. Thermaflo, Inc.*, 2009 WL 1421173 (E.D.Tex. 2009)

Plaintiff's counsel filed three related cases — identified as "*Kuzmin I*," "*Kuzmin II*," and "*Kuzmin III*" — and was sanctioned for attempting to obtain default judgments in *Kuzmin II* and *Kuzmin III* because such counsel (i) was aware of the existence and identity of defense counsel in *Kuzmin I* and (ii) failed to inform defense counsel of the default judgment hearings in *Kuzmin II* and *Kuzmin III*. *Id.* at *2-3. The Court based its award of sanctions in part upon that portion of the Texas Lawyer's Creed providing that a lawyer will "not take advantage, by causing any default or dismissal to be rendered, when [he or she knows] the identity of an opposing counsel, without first inquiring about that counsel's intention to proceed." Further, the Court rejected counsel's many arguments allegedly justifying his violation of the Texas Lawyer's Creed, including the argument that such counsel had "good reason" to believe that counsel representing the defendant in *Kuzmin I* was not representing the defendant in *Kuzmin II* and *Kuzmin III*. *Id.* at *3.

D. TEXAS APPELLATE PRACTICE

It has come to light that unprofessional conduct is not limited to the trial court, but is spilling over into the appellate arena, as well. The following cases are illustrative of the judicial response:

1. *In the Matter of J.B.K.*, 931 S.W.2d 581 (Tex. App. — El Paso 1996, no writ)

This is an opinion by the El Paso Court of Appeals on an order referring a disciplinary matter to the office of the General Counsel of the State Bar of Texas. An attorney, J.B.K., presented oral argument before the El Paso Court of Appeals, but prior to the date of issuance of the opinion in that matter, J.B.K. engaged in ex parte contact with the Court of Appeals by communicating directly with a member of the court's staff who was his acquaintance. *Id* at 583. The telephonic communication with the staff member was for the purpose of inquiring, among other things, as to what his chances were in the then pending case and whether he should settle his case prior to the issuance of the opinion. *Id*.

The court began its discussion of the lawyer's conduct by stating:

An honest and ethical lawyer has long been part of the foundation for the historically elevated and well-deserved roll that lawyers have played in our culture. Lawyers, then, owe to the courts duties of scrupulous honesty, forthrightness, and the highest degree of ethical conduct Inherent in that high standard of conduct is compliance with both the spirit and express terms of established rules of conduct and procedure. *Id*.

The court next cited to the order of the Supreme Court of Texas and the Court of Criminal Appeals, promulgating and adopting "The Texas Lawyer's Creed — A Mandate for Professionalism" wherein the highest courts of the State of Texas ordered: "The conduct of a lawyer should be characterized at all times by honesty, candor, and fairness. In fulfilling his or her primary duty to the client, a lawyer must be ever mindful of the profession's broader duty to the legal system." *Id*.

The El Paso court then discussed professionalism in the appellate courts. The court stated: The Appellate and Advocacy Section of the State Bar of Texas has become so concerned with the standards [or lack thereof] of ethics and professionalism in the appellate courts that the chair has formulated a committee to draft 'standards of conduct for appellate lawyers,' an appellate attorney's creed similar in nature to the one referenced above. Not only has the chair requested input from the courts, he has announced that each court will be asked to adopt the creed when it is completed. The Eighth District Court of Appeals is determined to be among the first to approve such innovative measures. The concept, simply stated, is that the justices themselves are in the unique position of putting a stop to unethical and unprofessional behavior. *Id*.

The El Paso court, in addition to finding that the lawyer had violated the Texas Lawyer's Creed, also found the lawyer had violated the Texas Disciplinary Rules of Professional Conduct by communicating ex parte with the court for the purpose of influencing the court or person concerning a pending matter other than orally upon adequate notice to opposing counsel or to the adverse party if he is not represented by a lawyer. *Id* The court found that as a matter of law, any attempt to solicit or receive information on the merits of a pending case from a staff member of an appellate court constitutes an impermissible ex parte communication with chambers. *Id* at 584.

Finally, the court concluded as follows:

We recognize our obligation not only to ensure the proper administration of justice in this Court, but also our duty to the system of justice as a whole. We hasten to add that we are not merely the gatekeepers who monitor and patrol the conduct of members of the bar. While we owe a duty to the legal system as a whole and to the administration of justice, we are ever mindful that the judiciary also has a duty to the lawyers who appear before them, to the public at

large which elects them, and even to other members of the judiciary to ensure that our democracy is preserved and protected and that *professionalism reigns supreme*. We take this duty seriously. *Id.* at 5 84-85. (*italics added*).

2. *Caldwell v. River Oaks Trust Co.*, 1996 WL 227520 (Tex. App. — Houston [1st Dist.] 1996, writ denied)

In this unreported opinion, the Houston Appellate Court addressed the appropriateness of the plaintiff's brief before them. The plaintiff had filed a motion for leave to file a brief in excess of 50 pages in which he stated that the appeal was difficult, if not impossible, to present with clarity in fewer pages. The court had granted the motion.

In commenting on the brief, the appellate court stated:

The plaintiff has burdened this court and the appellees with an unwieldy 70-page diatribe disguised as an appellate brief. It is filled with invective — such as referring to ROTC as the 'trustee from hell' and describing Marietta Schumacher as a cat torturing a mouse — that has absolutely no place in an appellate brief. *Id.* at *1.

At this point, the appellate court in footnote 1 stated, "We note that the Texas Lawyer's Creed, adopted by the Texas Supreme Court, urges lawyers to 'avoid disparaging personal remarks or acrimony toward opposing counsel, parties, and witnesses.'" *Id.*

The court continued its comment on plaintiff's brief by stating that it contained numerous confusing references to unidentified persons, entities, and events and that it contained a tremendous amount of unnecessary argument. *Id.* The court further noted that "What the brief does not contain is coherent legal argument." *Id.* Finally, the court stated, "We have no doubt the plaintiff could have briefed his points of error 'with clarity in 50 pages or less if he had not sacrificed legal analysis in favor of hyperbole.'" *Id.*

2. *Schlafly v. Schlafly*, 33 S.W.3d 863 (Tex. App. — Houston [14th Dist] 2001, pet. denied)

Husband appealed from a divorce proceeding awarding his former wife the primary joint managing conservatorship. *Id.* at 867. In his appellate brief, the husband's attorney misrepresented to the court that the trial court had awarded his former wife "over 90% of the community property." *Id.* at 872. He was strongly chastised by the Appellate Court which stated:

The Texas Disciplinary Rules of Professional Conduct impose upon counsel the duty of candor toward the court. See TEX. DISCIPLINARY R. PROFESSIONAL CONDUCT 3.03(a)(1) (stating that a "lawyer shall not knowingly make a false statement of material fact or law to a tribunal."). Similarly, both the Texas Lawyer's Creed and the Texas Standards of Appellate Conduct admonish counsel against making misrepresentations to a court. The duty of honesty and candor a lawyer owes to the appellate court, includes fairly portraying the record on appeal. Misrepresenting the facts in the record not only violates that duty but subjects offenders to sanctions. *Id.* at 873.

The Court also ordered the husband to pay all costs of appeal as a sanction under Tex. R. App. P. 43.4, and stated that when the record contains unfavorable facts, the zealous appellate advocate should fairly disclose them and portray them in his brief, and challenge their impact and implication, but not misrepresent facts to the court. *Id.* at 874.

3. *Sossi v. Willette & Guerra*, 139 S.W.3d 85 (Tex.App. — Corpus Christi 2004, no pet.)

The Court assessed sanctions against counsel based in part of Texas Lawyer's Creed provision providing that "I will not knowingly misrepresent, mischaracterize, misquote or miscite facts or authorities to gain an advantage" because the Court concluded that appellant had no reasonable expectation that the Court would assume jurisdiction over the appeal based upon "the supporting case law, the facts of the case, appellant's own contentions and arguments made on appeal, and his misrepresentations regarding the nature of this appeal." *Id.* at 89-90.

As these cases illustrate, everywhere the Rambo litigator or unprofessional conduct rears its ugly head, it needs to be dealt with by the legal profession, the courts and by peers in the legal community. The above cases illustrate that the Appellate and Advocacy Section of the State Bar of Texas is rising to the challenge to turn back the tide of unprofessional conduct in the appellate arena.

V. CONCLUSION:

The above cases, which reference the various creeds and professional guidelines established by the bar, professional associations and courts, are but a start. The cases referenced are not an exhaustive list, but are merely illustrative of how the courts have taken the Creeds from their written word and applied them in practice. Change is a slow process. Just as certain lawyers made a slow downward spiral over many years into Rambo style tactics, it will be a slow upward climb to reach and reestablish the legal profession to a high professional plateau. To date, we have seen a decline of professionalism, the legal community's response through the establishment of various creeds and professional guidelines, and we are seeing the courts' application of these remedies.

An attorney who has been disbarred must, upon petitioning for reinstatement, certify that "he or she has recently read and understands the Texas Lawyer's Creed — A Mandate For Professionalism." Tex. Disciplinary R. Prof. Conduct 11.02(F) (1992). Please do not let the first time you or a colleague read the Lawyer's Creed be for the purpose of reinstatement to the bar because by then it is too late.

As a final note to this article, on February 24, 1989, Judge Wayne E. Alley, United States District Judge for the Western District of Oklahoma, in the case of *Krueger v. Pelican Prod Corp.* (Civ.-87-2385-A) conveyed his displeasure with the current state of litigation.

Judge Alley's order in this case was directed at the conduct of lawyers who had not lived up to the dictates of the Local Bar Association's Lawyer's Creed and sums up the current feeling of most judges concerning discovery disputes when he wrote: "If there is a hell to which disputatious, uncivil, vituperative lawyers go, let it be one in which the damned are eternally locked in discovery disputes with other lawyers of equally repugnant attributes."

* Emanuela Prister and Greg McConnell assisted Blackie Holmes in the preparation of the original paper and earlier updates. Carl Kulhanek assisted Fred Hagans in this updating of the paper.