



BELLNUNNALLY

TEXAS LAWYER'S CREED: A GUIDE FOR IN HOUSE COUNSEL

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August 1, 2017

ABOUT ME

- Commercial Litigation Partner – Bell Nunnally & Martin
 - Specializing in high stakes disputes
 - Representing everyone from start-up businesses to Fortune 500 companies
- Advocate for adherence to the Texas Lawyers Creed

APPLICATION TO IN HOUSE COUNSEL

- Texas Lawyer's Creed Applies to In House Counsel:
 - In supervising their outside counsel
 - In supervising their co-workers
 - In dealing with their client
 - In governing their own behavior
- Interviews with 12 current in house counsel from small legal departments to multinational, Fortune 500 companies

QUESTION OF THE DAY?

As in house counsel, who do you want representing you?



BETTER QUESTION

As in house counsel, who do you want to be?



OUTLINE

- I. History of Texas Lawyer's Creed
- II. Duties Owed to Lawyer to Legal System
- III. Duties Owed by Lawyer to Client
- IV. Duties Owed by Lawyer to Other Lawyers
- V. Duties Owed by Lawyer to Judge

HISTORY OF TEXAS LAWYER'S CREED

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- May 1989 - The Texas Supreme Court formed the Advisory Committee on Professionalism
 - Arising out of “Rambo” litigation tactics
 - Led by Justice Eugene Cook – the “Father of Professionalism” in Texas.
 - Committee was comprised of Plaintiffs and Defense Attorneys from across the state
- November 7, 1989 - TXSC Issued Texas Lawyer's Creed - A Mandate for Professionalism



HISTORY OF TEXAS LAWYER'S CREED

- Texas was first state in the country to adopt a creed of conduct.
- Immediately accepted by the Bar and, especially, the Courts:
 - “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.” *Warrilow v. Norrell*, 791 S. W. 2d 515, 531 n.3 (Tex, App.-Corpus Christi 1989, writ denied)

HISTORY OF TEXAS LAWYER'S CREED

- Consists of Four Components:
 - I. Our Legal System
 - II. Lawyer to Client
 - III. Lawyer to Lawyer
 - IV. Lawyer and Judge

HISTORY OF TEXAS LAWYER'S CREED

- Compliance with the TLC is voluntary
- Preamble to the TLC (emphasis added):

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

HISTORY OF TEXAS LAWYER'S CREED

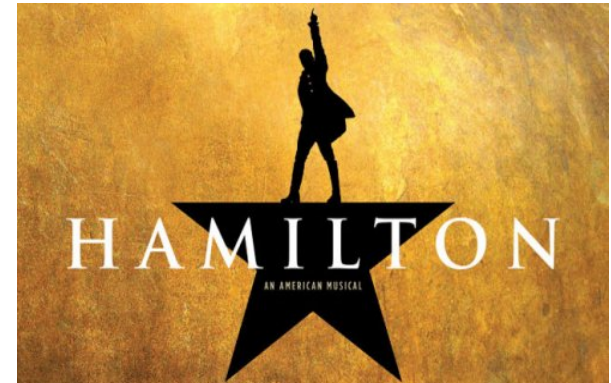
- Codifies Unwritten Rules of Behavior
 - Little chance of institutional punishment
 - *i.e.*, kicked out of profession or thrown in jail
 - High likelihood of social stigma
 - *i.e.*, nobody likes you any more.

HISTORY OF TEXAS LAWYER'S CREED



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- Example 2: Affairs of Honor (Duels)
 - Ten Duel Commandments:
 - Demand satisfaction
 - Each side appoints a “second” (an agent)
 - The “seconds” meet to negotiate a truce
 - Most duels ended here
 - Seconds prepare pistols and doctors
 - Pick a location for duel
 - At location, “seconds” meet again to negotiate truce



HISTORY OF TEXAS LAWYER'S CREED

- If Voluntary, Why Should I Comply?
 - Lowers your costs
 - Focus on substance rather than procedure
 - Speeds up resolution of legal matters
 - Reduces animosity
 - Allowing focus on business objectives
 - Shared courtesy
 - Other commitments, personal emergencies, vacations, etc.
 - Preamble: Because it is the right thing to do

HISTORY OF TEXAS LAWYER'S CREED

- Q: Who is covered by the Texas Lawyer's Creed?
 - A: All Licensed Texas attorneys.
 - Sometimes even out of state attorneys who appear pro hac vice

- Common Misconception: TLC only applies to litigators
 - False – Has applicability for transactional and litigation attorneys, as well as inside and outside counsel.
 - Some duties (i.e., duties to Court) may not apply to non-litigators, but others (lawyer to lawyer) have direct applicability

ARTICLE I: OUR LEGAL SYSTEM

ARTICLE I: LEGAL SYSTEM

- Shortest and most generalized section
- Key Provisions:
 - “I am passionately proud of my profession. Therefore, ‘My word is my bond’ ”
 - “I commit myself to an adequate and effective pro bono program”

ARTICLE II: LAWYER TO CLIENT

ARTICLE II: LAWYER TO CLIENT

- Key Provisions:
 - “I will advise my client of the contents of this creed when undertaking representation.”
 - “Client” for in house purposes
 - Outside counsel will sometime reference the creed in their engagement letters
 - “I will endeavor to achieve my client’s lawful objectives in legal transactions and in litigation as quickly and economically as possible.”
 - Example: Spends \$200,000 in legal fees on a case where only \$10,000 is controversy
 - Example 2: The deposition machine.

ARTICLE II: LAWYER TO CLIENT

- Key Provisions:
 - “I will be loyal and committed to my client’s lawful objectives, but I will not permit that loyalty and commitment to interfere with my duty to provide objective and independent advice.”

ARTICLE II: LAWYER TO CLIENT

- Key Provisions (Respect and Courtesy):
 - “I will advise my client that civility and courtesy are expected and are not a sign of weakness.”
 - “I will treat adverse parties and witnesses with fairness and due consideration. A client has no right to demand that I abuse anyone or indulge in any offensive conduct”

ARTICLE II: LAWYER TO CLIENT

- Example of Lack of Respect and Courtesy



ARTICLE II: LAWYER TO CLIENT

- Another example of Lack of Respect and Courtesy



ARTICLE II: LAWYER TO CLIENT

- Key Provisions:
 - “I will advise my client that we will not pursue conduct which is intended primarily to harass or drain the financial resources of the opposing party.”
 - “I will advise my client that we will not pursue tactics which are intended primarily for delay.”

ARTICLE II: LAWYER TO CLIENT

- Key Provisions:
 - “I will advise my client that we will not pursue any course of action which is without merit.”



ARTICLE II: LAWYER TO CLIENT

- Key Provisions:
 - “I will advise my client of proper and expected behavior”
 - What do when client doesn't listen though?
 - Real world example:



ARTICLE II: LAWYER TO CLIENT

- Key Provisions (Substance Over Procedure):
 - “I will advise my client that I reserve the right to determine whether to grant accommodations to opposing counsel in all matters that do not adversely affect my client’s lawful objectives. A client has no right to instruct me to refuse reasonable requests made by other counsel.”
 - Lawyer is the captain of the ship on procedure



ARTICLE III: LAWYER TO LAWYER

ARTICLE III: LAWYER TO LAWYER

- Key Provisions (Substance over Form):
 - “I will not quarrel over matters of form or style, but I will concentrate on matters of substance.”
 - Examples:
 - Use red-line when making changes – Item III(3)
 - Notify promptly when cancelling hearings – Item III(5)
 - Agree to extensions and procedural waivers when no “legitimate objectives” of client are affected – Item III(6)
 - Provide adequate opportunity for responses to motions – Item III(7)
 - Resolve objections by agreement – Item III(8)
 - Confer on deposition scheduling – Item III(14)
 - Stipulate to undisputed facts – Item III(15)
 - Refrain from excessive discovery – Item III(16)

ARTICLE III: LAWYER TO LAWYER

- Key Provisions (Motives and Disagreement):
 - “I will not, without good cause, attribute bad motives or unethical conduct to opposing counsel nor bring the profession into disrepute by unfounded accusations of impropriety.”
 - Example: Plaintiffs’ counsel in Chicago
 - “I can disagree without being disagreeable. I recognize that effective representation does not require antagonistic or obnoxious behavior.”
 - We are in a competitive profession.
 - Obvious dynamic, but cannot be taken personally.
 - *i.e.*, “Here is a case that’s directly on point” vs. “Opposing counsel must be either an idiot or lazy, because he didn’t find this case that’s directly on point.”

ARTICLE IV: LAWYER AND JUDGE

ARTICLE IV: LAWYER AND JUDGE

- Key Provisions
 - “I will treat counsel, opposing parties, the Court, and members of the Court staff with courtesy and civility.”
 - “I will be punctual.”
 - “I will give the issues in controversy deliberate, impartial, and studied analysis and consideration.”
 - “I will be considerate of the time constraints and pressures imposed upon the Court, Court staff, and counsel in efforts to administer justice and resolve disputes.”
 - Example: Attorney who insisted getting a ruling on all objections to discovery.

QUESTIONS?

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