

**THE TEXAS LAWYER'S CREED:
THE RULEBOOK FOR A GOOD LAWYER**

Moderator:

HARPER ESTES, *Midland*
State Bar of Texas President 2008-2009
Lynch Chappell & Alsup

Panel:

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San Antonio Bar Association President 2006-2007
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State Bar of Texas
3RD ANNUAL BUSINESS TORTS INSTITUTE 2011
October 13 – 14, 2011
Houston

CHAPTER 6

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Career:

Almanza, Blackburn & Dickie LLP, Partner, January 1, 2010 to Present

Akin & Almanza, Partner, February 1, 2005 to December 31, 2009

Akin & Almanza, Of Counsel, 2004

Minton, Burton, Foster and Collins, P.C., 1982-2004
Law Clerk to United States District Judge Jack Roberts, 1980-1982.

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University of Texas at Austin - Doctor of Jurisprudence, 1980;

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Areas of Practice:

- General Civil and Commercial Litigation,
- Legal and Professional Malpractice Defense,
- Municipality Defense Litigation,
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- Employment and Title VII Litigation
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Recognition:

Martindale-Hubbell AV Rating

Board Member, Texas Alcoholic Beverage Commission, 1994-2000

State Bar of Texas Presidential Citations, 1997 and 1998

State Bar of Texas Outstanding Third Year Director, 1992

2003-2009 Texas Super Lawyer

2008 Recipient of Michael J. Crowley Award.

2010 The Best Lawyers In America

2010 Recipient of Lifetime Achievement Award - Travis County Women's Lawyer Association.

Member:

President State Bar of Texas, 2006-2007 and Director, 1989-92

Travis County Bar Association (President, 1988-89; President, Criminal Law and Procedure Section, 1985-86)

Texas Board of Legal Specialization (June 1995-May 2001)

Texas Bar Foundation (Trustee, 1992-95, Chair of the Fellows, 2003-04)

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Harper Estes is the 2008-2009 President of the State Bar of Texas, having served as its President Elect for 2007-2008 and on its Board of Directors from 1999-2002. Harper joined the firm's trial section upon graduation from the Baylor Law School in 1979. He is a 1977 graduate of Texas Tech University.



Harper is Board Certified in Civil Trial Law by the Texas Board of Legal Specialization and a member of the American Board of Trial Advocates. He has served as lead counsel in state and federal court cases throughout Texas and in New Mexico, Alabama, and Arkansas. Those cases include royalty class actions, environmental damage claims, cases involving complex commercial transactions, myriad oil and gas issues, alleged misappropriation of trade secrets, employment issues and personal injury. Harper has argued cases before several intermediate appellate courts, the Fifth Federal Circuit Court of Appeals and the Supreme Court of Texas.

In addition to his trial and appellate practice, Harper is active as a mediator and arbitrator, having concluded over one thousand mediations.

Besides extensive Bar activity, Harper has served the community in several capacities, including as a Director and Officer of the Board of Midland Fairhavens, Inc., Director of Big Brother Big Sisters of Midland, Director of Hearthstone Temporary Children's Shelter, Advisory Director to the Texas Book Festival, Chair of the Davidson Distinguished Lecture Series of the Midland College Foundation and as a Deacon and Elder of First Presbyterian Church of Midland.

Harper is licensed in all Texas courts, the United States Supreme Court, the United States Court of Appeals for the Fifth Circuit and United States District Courts for the Northern, Western and Southern Districts of Texas.

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Blackie Holmes, a highly respected Dallas attorney, is a partner with the firm Burford and Ryburn, L.L.P. Blackie has spent the past half-century raising the bar for professionalism among Texas attorneys.

Blackie earned his bachelor's degree (1957) and his L.L.B. (1959) from Southern Methodist University. Upon graduating from SMU, he served on the Judge Advocate General's Staff of the United States Air Force until 1962, and in the USAF until 1970. In 1962, Blackie joined the Dallas firm Burford & Ryburn, L.L.P., and has spent the past five decades practicing almost exclusively in the field of civil/defense litigation and all areas of tort litigation.

Blackie has served the Texas legal community in a multitude of capacities over the years, and has left an indelible mark on Texas legal professionalism. In 1989 he served on the State Bar's Special Committee on Professionalism of Lawyers, was Co-Chairman of the Texas Supreme Court Advisory Committee on Professionalism, and from 1989 to 1990 was the Co-Chairman of the Texas Lawyer's Creed Committee, where he co-authored The Texas Lawyer's Creed - a commitment every Texas attorney makes to adhere to the highest principles of professionalism. He has also served as President of the Texas Association of Defense Counsel (1992-1993) and as President of the American Board of Trial Advocates - Dallas Chapter (2000). Blackie has dedicated himself to the Dallas Bar Association as well, serving as Chairman of the Task Force on Professionalism (1987-1989) and Chairman of the Morris Harrell Professionalism Committee (2003). The Dallas Bar recognized his efforts by honoring him with the JoAnna Moreland Outstanding Committee Chair/Co-Chair Award for his work on the Bench Bar Committee (2002) and the Morris Harrell Professionalism Committee (2003). Since 1999, Blackie has been Master Emeritus for the Patrick E. Higginbotham Inn of the American Inns of Court.

Blackie's devotion to the Texas legal community has earned him numerous honors and awards - for his success as a trial lawyer, for his leadership, for his commitment to professionalism, but mainly for his legendary contributions to the betterment of the legal profession in Texas. Blackie is a Fellow with the American College of Trial Lawyers and is the recipient of the State Bar's Presidential Citation (1995), the State Bar College's Professionalism Award (1999), the Dallas Bar Association and Texas Center for Ethics and Professionalism's Morris Harrell Professionalism Award (2000), and the State Bar's Judge Sam Williams Local Bar Leadership Award (2001). In 2002, the Texas Bar Foundation presented Blackie with the prestigious Lola Wright Foundation Award for Outstanding Public Service in the Enhancement of Legal Ethics in Texas. He was named Trial Lawyer of the Year in 2004 by both the Dallas and Texas Chapters of the American Board of Trial Advocates. The SMU Dedman School of Law honored Blackie with the Distinguished Alumni Award for Private Practice for 2004-2005.

From 2003 to 2010, Blackie has been named a Texas Super Lawyer by Texas Monthly. In 2009 the State Bar of Texas named Blackie a Texas Legal Legend, and in 2010 the Texas Association of Defense Counsel presented Blackie with the Civil Justice Preservation Award for his significant contributions to the protection and preservation of the civil justice system through word and deed, and for continuing that effort on behalf of the public in general and the TADC.

In addition to his efforts with the Bar, Blackie has remained very involved with his community, serving in a number of capacities for the City of University Park, including Mayor (2004-2010). In May of last year, the City recognized Blackie's years of dedication by naming the University Park swimming pool the "Holmes Aquatic Center."



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Education

- J.D., University of Texas School of Law, 1984
- B.A., Rice University, 1981

Bar Admissions

- Texas

Court Admissions

- U.S. Supreme Court
- U.S. District Court for the Western District of Texas
- U.S. District Court for the Southern District of Texas
- U.S. District Court for the Northern District of Texas

Lamont A. Jefferson

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Lamont Jefferson has extensive jury and non-jury trial experience in various jurisdictions in both state and federal courts in Texas. He has been go-to counsel on some of the most important recent cases in San Antonio, including the 2010 litigation over the multi-billion dollar expansion of the South Texas Nuclear Project; and 2009 litigation over the \$26 billion Clear Channel merger. Jefferson has been lead counsel in more than 60 jury verdicts in all – most recently as co-lead counsel in successfully defending a truck driver in a multi-vehicle collision catastrophic injury case tried to a jury in Decatur, Texas in May 2011. His trial practice focuses on business, insurance, and fiduciary duty litigation. He is also a frequent speaker on litigation tactics.

Lamont's recent accomplishments include:

- Inducted into the American College of Trial Lawyers in 2004 - an invitation only organization limited to no more than 1% of the total lawyer population of any State.
- 2010 non-jury trial involving the multi-billion dollar expansion of the South Texas Nuclear Project – case tried within 6 weeks of initial filing.
- 2009 lead counsel for cross examination of financial advisers and hedge fund managers in bench trial involving the Spectrum bankruptcy.
- Lead counsel in representation of The Scooter Store in multiple jurisdictions in defense of its intellectual property rights.
- Trial and settlement of insurance coverage litigation on behalf of publicly traded corporation - total recovery of more than \$17 million.
- Successful jury verdict in San Antonio in case involving contract interpretation with millions of dollars in dispute.
- Representation of beneficiary of trust valued at greater than \$100 million pursuing allegations of mismanagement and breach of fiduciary duties.

Representative Publications and Speaking Engagement

Presenter: ABOTA Masters in Trial seminars series (2009, 2011); Presenter: "Business Disparagement And The Internet: Libel And Slander, Injury To The Brand," State Bar of Texas - Business Torts, (2010); Presenter: "Evolving Issues Regarding Nonparty Electronic Discovery And The Internet," State Bar of Texas - Advanced Civil Trial Course (2009); "The Image and Role of a Lawyer" The University of Texas School of Law (2007); Presenter: "Lawyer to Lawyer: Things We Know (But are well to be reminded)" State Bar of Texas Litigation Section Professional Responsibility Program (2007); "Where the Buck Stops: Defending the Corporate Representative Deposition" - Texas Bar CLE (2007); Presenter: American

Board of Trial Advocates, Masters in Trial Seminar (2007); Course Director and Moderator, "*Brown v. Board of Education: Half Century Later...Are We Half Way There*," State Bar of Texas Annual Meeting (2004); "*Strategic Discovery, Chapter 4*," State Bar of Texas (2002); "Managing a Serious Personal Injury Incident on a Construction Project," State Bar of Texas - Construction Law Conference (2002); "Damages Update" State Bar of Texas Litigation Update Institute (2000); "Cross Examination - Lighten Up," Advanced Civil Trial Course (1999); "Fiduciary Duties of Officers and Directors," University of Houston (1999); "Making it Stick - Enforcing Jury Waiver Choice of Law/Choice of Venue Agreements," ABA Real Estate Section (1998); "Caveat Spoliatorum," Spoliation of Evidence State - Bar of Texas (1998).

Honors and Awards

- Named one of The Best Lawyers in America in Commercial Litigation, Appellate Law and Bet-the-Company Litigation (*Woodward/White, Inc.*, 2003-2011).
- Named an Outstanding Lawyer in Commercial Law by the *San Antonio Business Journal* (2010).
- Named a Texas Super Lawyer by *Law and Politics* and *Texas Monthly* (2003-2010).
- Recognized as a Top 100 Texas Super Lawyer- Business Litigation (2010).
- Recognized as a Top 50 Central/West Texas Super Lawyer- Business Litigation (2010).
- Ethical Life Award from Association of Corporate Counsel, South/Central Texas Chapter (2010).

Memberships

- Sunset Advisory Commission, Public Member (2009-2011)
- University of Texas Law School Alumni Association - Executive Committee (2010-2013)
- American Bar Association Section of Litigation - Member, and Co-Chair of Commercial and Business Litigation Committee
- American College of Trial Lawyers Fellow (inducted in 2004)
- American Law Institute Member (2004)
- Texas RioGrande Legal Aid (TRLA) - Member, Board of Directors (President 2004, 2005)
- Advisory Board, Medical Legal Partnership for Children
- American Board of Trial Advocates
- Texas Association of Defense Counsel - Former Area Vice President
- American Inns of Court - Master - Local President-Elect (2008-2009)
- Texas Equal Access to Justice Foundation - Board Member (2007)
- State Bar of Texas - Member, Board of Directors (2007-2010), State Bar's Court Administration Task Force, Technology Oversight, Client Security Fund, and Supreme Court Advisory Committees
- State Bar of Texas Task Force on Diversity - Member (2006)



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Gib Walton is a co-leader of Hogan Lovells' global Projects, Engineering, and Construction practice, a partner in the Houston office, and a member of the Litigation practice. His principal area of practice is civil litigation, including jury trials, bench trials, and arbitration.

Gib represents plaintiffs and defendants in corporate, securities, commercial, fiduciary, construction, professional liability, product liability, probate, and oil and gas/energy litigation. A Fellow of the American College of Trial Lawyers, he is certified as a specialist in Civil Trial Law by the Texas Board of Legal Specialization.

According to *Chambers USA* (2010), Gib "is praised for his 'excellence as a trial lawyer.' In addition, he recently acted as president of the State Bar of Texas. His expertise covers a range of commercial, securities, products liability, and oil and gas trial work, while his recent caseload has included a substantial volume of construction disputes relating to the energy sector." According to *Legal 500 US* (2011), "Houston-based Gib Walton 'manage[s] cases effectively and with a minimum of oversight."

Gib has handled complex civil commercial litigation in state and federal courts throughout Texas and Louisiana. He has first-chaired over 40 jury trials and been the lead trial lawyer in hundreds of other lawsuits, arbitrations, and appeals. He has argued 13 appeals before the Fifth Circuit Court of Appeals and the Texas Courts of Appeal and one appeal before the Texas Court of Criminal Appeals.

Prior to joining our legal practice, Gib was a partner at another large international law firm. Following law school, he served as a judicial clerk to The Honorable Malcolm R. Wilkey of the U.S. Court of Appeals for the D.C. Circuit.

PRACTICES

Litigation, Arbitration and Employment

Energy

International Arbitration

Projects, Engineering and Construction

Investigations, White Collar and Fraud

Product Liability

Professional Liability

EDUCATION

J.D., *with honors*, *Texas Law Review*, *Order of the Coif*, *Phi Delta Phi*, The University of Texas School of Law, 1975

B.A., *with honors*, *Phi Beta Kappa*, University of Virginia, 1972

MEMBERSHIPS

Fellow, American College of Trial Lawyers

Fellow, International Society of Barristers

Member, American Board of Trial Advocates

President, State Bar of Texas, 2007-2008

President, Houston Bar Association, 1998-1999

Chair, Houston Bar Foundation, 1994-1995

Chair, Texas Bar Foundation, 2011-2012

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53. *Rawlins v. Rawlins*, 324 S.W.3d 852 (Tex.App.—Houston [14th Dist.] 2010, no pet.).....17

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59. *Titan Indemnity Co. v. Old South Ins. Group, Inc.*, 221 S.W.3d 703 (Tex. App.—San Antonio 2006, no pet.) 16

60. *Union City Body Co., Inc. v. Ramirez*, 911 S.W.2d 196 (Tex. App.—San Antonio 1995, no writ) 5

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THE TEXAS LAWYER'S CREED: THE RULEBOOK FOR A GOOD LAWYER

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.legalethicstexas.com/Downloads/Texas-Lawyers-Creed/Texas_Lawyers_Creed.aspx

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 15 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 41 reported cases and 12 unreported cases authored by the Texas Supreme Court and various Texas Courts of Appeal, as well as by seven 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. Att'y 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 Nat'l 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)

Judge Doggett once again reminded the appellate courts in general but the Houston Court of Appeals, 14th Judicial District, 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. *Warrilow 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 which was 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. State Bar of Texas*, 856 S.W.2d 804 (Tex. App.—Austin 1993), *rev'd*, 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), *rev'd*, 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/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 went on, and 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 Lawyer's 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 Lawyer's 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 Plaintiff's 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), *judgm't set aside*, No. 05-02-01817-CV, 2003 WL 1983720 (Tex. App.—Dallas Apr. 30, 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 [14 Dist.] 2004, pet. denied)

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)).

B. Texas District Court 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*, Civ. No. 3:90-CV-0353-H, 1992 WL 420877 (N.D. Tex. Dec. 2, 1992)

In this unreported opinion, the court found that one of the defendant's attorney 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.*, No. 3-01-CV-0442-R, 2002 WL 1285365 (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 Tokio. *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.

5. *Atlantic Recording Corp. v. Heslep*, No. 06-cv-132, 2007 WL 1435395 (N.D. Tex. May 16, 2007)

Judge Means, citing *Dondi*, noted that an attorney was properly sanctioned for "opposing discovery unreasonably" and in bad faith. *Id.* at *8. The court also noted that sanctions are appropriate when an attorney files a motion that is intended to harass and unnecessarily increase the costs of litigation. The motion that the attorney filed here both unreasonably opposed discovery and unnecessarily increased the costs of litigation. *Id.* Thus, the sanctions were appropriate.

6. *Dymatize Enterprises, Inc. v. Maximum Human Performance, Inc.*, No. 3:09-CV-046-O, 2010 WL 4788571 (N.D. Tex. Nov. 17, 2010)

The court noted that "[t]he *Dondi* court also said that characterization of opposing party's conduct as acting in bad faith 'should be sparingly employed by counsel and should be reserved for only those instances in which there is a sound basis in fact demonstrating a party's deliberate and intentional disregard of an order of the court or of obligations imposed under applicable Federal Rules.'" *Id.* at *4, citing *Dondi Properties Corp. v. Commerce Sav. & Loan Ass'n*, 121 F.R.D. 284, 289 (N.D. Tex. 1988).

7. *Illusions-Dallas Private Club, Inc. v. Steen*, No. 3:04-CV-0201-B, 2007 WL 4380132, (N.D. Tex. Dec. 13, 2007)

The court cited *Dondi* to encourage the parties to confer regarding the use of exhibits at trial. *Id.* at *5, citing *Dondi Properties Corp. v. Commerce Sav. & Loan Ass'n*, 121 F.R.D. 284, 289-90 (N.D. Tex. 1988) (en banc) (noting purpose of discovery rules is to promote frank exchange and resolve issues by agreement).

8. *Healix Infusion Therapy, Inc. v. Helix Health, LLC*, CIV.A. H-08-0337, 2008 WL 1883546 (S.D. Tex. Apr. 25, 2008)

In *Healix*, the court determined that the parties had done a great disservice to the court by forsaking "cogent and well-researched arguments for sarcastic and pejorative insults." *Id.* at 12 (citing comments in the pleadings such as: "penchant for filing or

threatening to file superfluous motions or pleadings.”) In response, the court admonished the parties to treat each other with more “civility and courtesy” and attached a copy of the Texas Lawyer’s Creed in its entirety to the Memorandum Opinion and Order.

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. Quarles*, 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.*, No. Civ. A. H-94-2848, 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 Plaintiff's 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 in 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 \$2500 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, (Bankr. S.D. Tex. 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, 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.

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 two 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 584-85. (*italics added*).

2. *Caldwell v. River Oaks Trust Co.*, No. 01-94-00273-CV, 1996 WL 227520 (Tex. App.—Houston [1st Dist.] 1996)

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.*

3. *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.

4. *Tex. Sting, Ltd. v. R.B. Foods, Inc.*, 82 S.W.3d 644 (Tex.App.—San Antonio 2002, pet. denied)

The court cited the Texas Lawyer’s Creed provision that a lawyer “will not take advantage by causing any default or dismissal to be rendered when [the lawyer] know[s] the identity of an opposing counsel, without first inquiring about that counsel’s intention to proceed.” *Id.* at 647 n. 3, citing Tex. Lawyer’s Creed—Mandate for Professionalism Art. III(11). In light of the Creed, the court took note of an attorney’s failure to contact opposing counsel before taking a default judgement despite ongoing negotiations between the two parties. *Id.*

5. *Titan Indemnity Co. v. Old South Ins. Group, Inc.*, 221 S.W.3d 703 (Tex. App.—San Antonio 2006, no pet.)

In *Titan*, attorneys subject to a default judgment cited the Texas Lawyer’s Creed in testifying that “they were surprised to learn of the defaults because they were working with the same counsel in the HICO case, and they thought that the attorneys would have asked why they had not filed an answer in the other cases.” *Id.* at 710 (“will not take advantage by causing any default or dismissal to be rendered when [the lawyer] know[s] the identity of an opposing counsel, without first inquiring about that counsel’s intention to proceed.”).

6. *Blastmyresume.Com LP v. Hoboken Web Servs. LLC*, 214 Fed. Appx. 423, 424 (5th Cir. 2007) (no precedential)

Distinguishing *Dondi*, the court found that under limited circumstances, a party may withhold requested discovery information without sanctions. *Id.* at 423. The district court imposed sanctions, finding that the Appellant-attorney “had not cooperated with or been courteous to opposing counsel who requested the citizenship information.” *Id.* Since the district court judge at bar, who imposed the sanction had “remanded a claim to state court because the removing party’s notice of removal did not ‘set forth with specificity the citizenship of each of the parties,’” the Court of Appeals, concluded that the attorney’s “actions were based on his good-faith legal argument that parties that remove a state court action to federal court may remove only when they become aware of the facts that support jurisdiction.” *Id.* Therefore, sanctions were improper.

7. *In re City of Lancaster*, 228 S.W.3d 437 (Tex.App.—Dallas 2007)

The court cited the Texas Lawyer’s Creed in explaining counsel’s duty not to misrepresent or mischaracterize legal authorities in mandamus proceeding. *Id.* at 440, citing Tex. Lawyer’s Creed—Mandate for Professionalism Art. IV (“I will not knowingly misrepresent, mischaracterize, misquote or miscite facts or authorities to gain an advantage”).

8. *Twist v. McAllen Nat’l Bank*, 248 S.W.3d 351 (Tex.App.—Corpus Christi 2007, orig. proceeding)

The court found guidance from the Texas Lawyer’s Creed, in a case where an attorney knowing made a false statement through his representation of case law. *Id.* at 365, citing Tex. Lawyer’s Creed—Mandate for Professionalism Art. I(1) (“I am passionately proud of my profession. Therefore, ‘My word is my bond.’”). The court further cited *In re Hasbro*, describing the Creed as “a clear directive about how lawyers are to conduct themselves in respect to the legal system, the courts, clients and other lawyers”.

9. *In re A.D.*, 287 S.W.3d 356 (Tex.App.—Texarkana 2009, pet. denied)

The court cited the Texas Lawyer’s Creed’s provision that an attorney “will not knowingly misrepresent, mischaracterize, misquote or miscite facts or authorities to gain an advantage...” *Id.* at 369, citing Tex. Lawyer’s Creed—Mandate for Professionalism Ar. IV. In *In re A.D.*, the State’s motion incorrectly omitted the court’s reference to “other evidence” in favor of the suggestion that the

court actually held that the probation officer's opinion was the "only evidence" at trial. *Id.*

10. *Dolgenercorp of Tex., Inc. v. Lerma*, 288 S.W.3d 922 (Tex. 2009)

The court cited the Texas Lawyer's Creed for the proposition "that judges and lawyers should, and in most instances do, extend common and professional courtesies to other judges and lawyers." *Id.* at 930. Tex. Lawyer's Creed—A Mandate for Professionalism Art. III(11) ("I will not take advantage, by causing any default or dismissal to be rendered, when I know the identity of an opposing counsel, without first inquiring about that counsel's intention to proceed"). In *Dolgenercorp*, the Supreme Court of Texas found that the trial court had abused its discretion by denying a motion for new trial when a post-answer default judgment was rendered "against a party that by neither word nor deed exhibited intention to abandon or frustrate the proceedings." *Id.*

11. *Rawlins v. Rawlins*, 324 S.W.3d 852 (Tex.App.—Houston [14th Dist.] 2010, no pet.)

The court cited the Texas Lawyer's Creed, generally, for the proposition that an attorney is charged with "safeguarding the integrity of the legal process." *Id.* at 857, citing Tex. Lawyer's Creed—A Mandate for Professionalism Art. I, III. In *Rawlins*, an attorney erroneously insisted that his client was due back child-support payments "even to the point of appealing from the trial court's rather transparent efforts to correct the mistake." *Id.*

12. *Wreyford v. State*, No. 06-10-00122-CR, 2011 WL 917488 (Tex.App.—Texarkana, February 16, 2011)

This Court citing Texas Lawyer's Creed, stated that the Texas Supreme Court and the Texas Court of Criminal Appeals adopted the creed in an attempt to eliminate "abusive practices by lawyers. *Id.* at * 7, citing Tex. Lawyer's Creed—A Mandate for Professionalism III(10) (mandating that a lawyer will not "attribute bad motives or unethical conduct to opposing counsel" or make "disparaging personal remarks ... towards opposing counsel..."). In *Wreyford*, the court condemned one Attorney's actions when he "personally and explicitly impugned" opposing counsel's character and claimed that opposing counsel "lied to the jury." *Id.*

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 re-establish 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. See Exhibit "C." 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."

VI. TEXAS LAWYER'S CREED AND DONDI

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VII. TEXAS LAWYER'S CREED

A. GENERALLY

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 (1993) – the court found that the Appellants erroneously cited the Texas Lawyer's Creed for the proposition that without certain objections, an attorney would not have “zealously” represented their client. *Id.* at 737.

Byas v. State, 906 S.W.2d 86 (Tex. App. – Fort Worth 1995, no writ) – the court condemned unwarranted personal attacks on opposing counsel in court for demeaning the legal profession and providing a disservice to citizens. *Id.* at 87, citing TEX. LAWYER'S CREED – MANDATE FOR PROFESSIONALISM.

EEOC v. Chemtech Intl. Corp., No. Civ. A. H-94-2848, 1995 WL 608355 (S.D. Tex. July 21, 1995) – due to “an extraordinary level of needless contentiousness,” the court advised the parties to read the Texas Lawyer's Creed. *Id.* at *1 n. 1, citing TEX. LAWYER'S CREED – MANDATE FOR PROFESSIONALISM

Exxon Chemical Patents, Inc. v. Lubrizol Corp., 131 F.R.D. 668 (S.D. Tex. 1990) – the effectively adopted the Texas Lawyer's Creed by informing litigants that their failure to comply with the creed “will result in monetary sanctions being imposed against counsel individually.” *Id.* at 672.

Gomez v. State Bar of Texas, 856 S.W.2d 804 (Tex. App. -- Austin 1993), *rev'd*, 891 S.W.2d 243 (Tex. 1994) – finding that district court could grant declaratory or injunctive relief with respect to a claim of plaintiffs to enforce Texas Disciplinary Rules and Texas Lawyer's Creed which allegedly required lawyers to provide free legal services to the indigent. *Id.* at 814.

Hanley v. Hanley, 813 S.W.2d 511 (Tex. App. – Dallas 1991, no writ) – the court set aside discovery sanctions upon a showing of “abuse of discretion.” The court mentioned the Texas Lawyer's Creed to reinforce the need to assess lawyers' actions when they use “Rambo tactics in discovery proceedings.” *Id.* at 517.

Helix Infusion Therapy, Inc. v. Helix Health, LLC, CIV.A. H-08-0337, 2008 WL 1883546 (S.D. Tex. Apr. 25, 2008) - the court admonished the parties to treat each other with more “civility and courtesy” and attached a copy of the Texas Lawyer's Creed in its entirety to the Memorandum Opinion and Order.

Horner v. Rowan Co., Inc., 153 F.R.D. 597 (S.D. Tex. 1994) – court noted that with adoption of the Texas Lawyer's Creed “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 602-03; *see also Id.* at 583, citing Order of the Supreme Court of Texas and the Court of Criminal Appeals, promulgating and adopting, TEX. LAWYER'S CREED – MANDATE FOR PROFESSIONALISM.

In the Matter of J.B.K., 931 S.W.2d 581 (Tex. App. -- El Paso 1996, no writ) – in discussing the conduct of Appellate lawyers, the Court cited the Order adopting the Texas Lawyer's Creed. *Id.* at 583, citing Order of the Supreme Court of Texas and the Court of Criminal Appeals, promulgating and adopting, TEX. LAWYER'S CREED – MANDATE FOR PROFESSIONALISM.

Rawlins v. Rawlins, 324 S.W.3d 852 (Tex.App.-Houston [14th Dist.] 2010, no pet.) - the court cited the Texas Lawyer's Creed, generally, for the proposition that an attorney is charged with “safeguarding the integrity of the legal process.” *Id.* at 857, citing TEX. LAWYER'S CREED—A MANDATE FOR PROFESSIONALISM ART. I, III.

B. ART. I – OUR LEGAL SYSTEM

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

Greathouse v. Charter Nat'l Bank –Southwest, 851 S.W.2d 173 (Tex.1992) - J. Doggett concurring - “a judge owes the public the same ‘diligence, candor [and] punctuality that the Texas Lawyer’s Creed demands of lawyers.’” *Id.* at 177, citing TEX. LAWYER’S CREED – MANDATE FOR PROFESSIONALISM ART. I.

Hamill v. Level, 900 S.W.2d 457 (Tex. App.—Fort Worth 1995), *rev'd*, 917 S.W.2d 15 (Tex. 1996) – noting that “an attorney's own word is at least as sacrosanct as a court order to enforce compliance.” *Id.* at 464-65, citing TEX. LAWYER’S CREED – MANDATE FOR PROFESSIONALISM ART. I(1) (“[m]y word is my bond”).

Twist v. McAllen Nat'l Bank, 248 S.W.3d 351 (Tex.App.-Corpus Christi 2007, orig. proceeding) - the court found guidance from the Texas Lawyer’s Creed, in a case where an attorney knowing made a false statement through his representation of case law. *Id.* at 365, citing TEX. LAWYER'S CREED—MANDATE FOR PROFESSIONALISM ART. I(1).

C. ART. II – LAWYER TO CLIENT

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

Bullard v. Chrysler Corp., 925 F.Supp. 1180 (E.D. Tex.1996) – the court held that “[j]ust because an attorney's special skills in a particular specialty are not being utilized to their potential, an attorney is not relieved of his obligation to represent his client to the best of his ability. That responsibility rests with all members of the bar.” *Id.* at 1187, citing TEX. LAWYER’S CREED – MANDATE FOR PROFESSIONALISM ART. II.

Delta Air Lines v. Cooke, 908 S.W.2d 632 (Tex. App. – Waco 1995, Mand. Mot. Dism., improvidently granted) – in a case involving improper concurrent representation, the court noted that “our highest courts have committed the profession to ethical conduct beyond ‘laws and rules’ and to a duty of loyalty to its clients.” *Id.* at 634, citing TEX. LAWYER’S CREED—MANDATE FOR PROFESSIONALISM ART. II(3).

D. ART. III – LAWYER TO LAWYER

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

Brown v. Bandai America, Inc., No. 3-01-CV-0442-R, 2002 WL 1285265 (N.D. Tex. 2002) – the court cited to the provision of the Texas Lawyer’s Creed that states “I will not take advantage, by causing any default or dismissal to be rendered, when I know the identity of an opposing counsel, without first inquiring about that counsel's intention to proceed.” TEX. LAWYER’S CREED – MANDATE FOR PROFESSIONALISM ART. III(11).

Caldwell v. River Oaks Trust Co., No. 01-94-00273-CV, 1996 WL 227520 (Tex. App. – Houston [1st Dist.] May 2, 1996) – noting that the Texas Lawyer’s Creed urges lawyers to “avoid disparaging personal remarks or acrimony toward opposing counsel, parties, and witnesses.” *Id.* at *1 n. 1, citing TEX. LAWYER'S CREED—A MANDATE FOR PROFESSIONALISM ART. III(10).

Checker Bag Company v. Washington, 27 S.W.3d 625 (Tex. App. – Waco 2000, pet. denied) – court stated plainly that attacks on opposing counsel's integrity are categorically prohibited. *Id.* at 643, citing TEX. LAWYER'S CREED – MANDATE FOR PROFESSIONALISM ART. III(10).

DolgenCorp of Tex., Inc. v. Lerma, 288 S.W.3d 922 (Tex. 2009) - the court cited the Texas Lawyer's Creed for the proposition “that judges and lawyers should, and in most instances do, extend common and professional courtesies to other judges and lawyers.” *Id.* at 930. TEX. LAWYER'S CREED—A MANDATE FOR PROFESSIONALISM ART. III(11).

Edberg v. Neogen Corp., 17 F. Supp.2d. 104 (D. Conn. 1998) – in discussing legal professionalism generally, the court cited the provision of the Texas Lawyer' Creed which establishes that a lawyer “owes to opposing counsel, in the ... pursuit of litigation, courtesy, candor, cooperation and scrupulous observation of all agreements and mutual understandings.” *Id.* at 109-10, citing TEX. LAWYER'S CREED – MANDATE FOR PROFESSIONALISM ART. III.

Emmons v. Purser, 973 S.W.2d 696 (Tex. App.—Austin 1998, no pet.) – court cited the section of the Texas Lawyer's Creed which establishes that a lawyer “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, citing TEX. LAWYER'S CREED – MANDATE FOR PROFESSIONALISM ART. III(14).

McLeod, Alexander, Powel & Appfel, P.C. v. Quarles, 894 F.2d 1482 (5th Cir. 1990) – the court noted that while the Fifth Circuit has not adopted the Texas Lawyer's Creed, the court commends “the efforts of Texas's highest courts to instill a greater sense of professionalism among attorneys.” *Id.* at 1487. The court specifically cites to the Creed in its discussion of lawyer ethics during discovery. *See* TEX. LAWYER'S CREED – MANDATE FOR PROFESSIONALISM ART. III(17).

Owens v. Neely, 866 S.W.2d 716 (Tex. App.—Houston [14th Dist.] 1993, writ denied) – the court specifically cited the provision of the Texas Lawyer's Creed that states “I will not take advantage, by causing any default or dismissal to be rendered, when I know the identity of an opposing counsel, without first inquiring about that counsel's intention to proceed.” TEX. LAWYER'S CREED – MANDATE FOR PROFESSIONALISM ART. III(11).

Tex. Sting, Ltd. v. R.B. Foods, Inc., 82 S.W.3d 644 (Tex.App.-San Antonio 2002, pet. denied). - the court cited to the portion of the Texas Lawyer's Creed that states “will not take advantage by causing any default or dismissal to be rendered when [the lawyer] know[s] the identity of an opposing counsel, without first inquiring about that counsel's intention to proceed.” *Id.* at 647 n. 3, citing TEX. LAWYER'S CREED—MANDATE FOR PROFESSIONALISM ART. III(11).

Titan Indemnity Co. v. Old South Ins. Group, Inc., 221 S.W.3d 703 (Tex. App.-- San Antonio 2006, no pet.) – the court cited to the portion of the Texas Lawyer's Creed that states “will not take advantage by causing any default or dismissal to be rendered when [the lawyer] know[s] the identity of an opposing counsel, without first inquiring about that counsel's intention to proceed.” TEX. LAWYER'S CREED—MANDATE FOR PROFESSIONALISM ART. III(11).

Washington v. McMillan, 898 S.W.2d 392 (Tex. App.—San Antonio 1995, no writ) – the court determined that an attorney had violated the Texas Lawyer's Creed when there was no attempt made by party to contact opposing counsel prior to a hearing. *Id.* at 394, citing TEX. LAWYER'S CREED – MANDATE FOR PROFESSIONALISM ART. III(11).

Wreyford v. State, No. 06-10-00122-CR, 2011 WL 917488 (Tex.App. –Texarkana, February 16, 2011) - the court cited to the mandate in the Texas Lawyer's Creed that a lawyer will not “attribute bad motives or unethical conduct to opposing counsel” or make “disparaging personal remarks ... towards opposing counsel....” TEX. LAWYER'S CREED – MANDATE FOR PROFESSIONALISM ART. III(10).

E. ART. IV – LAWYER AND JUDGE

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

Aguilar v. Anderson, 855 S.W.2d 799 (Tex. App. – El Paso 1993, writ denied) – citing the Texas Lawyer’s Creed from the proposition that the role of the jurist is to act as a “symbol of both the judicial system and the orderly administration of justice.” *Id.* at 814, citing TEX. LAWYER’S CREED—MANDATE FOR PROFESSIONALISM ART. IV(1).

Delaney v. University of Houston, 835 S.W.2d 56 (Tex. 1992) – a per curiam concurring opinion noting that a Justice who writes an opinion that levels “accusations against members of the Court to which they cannot ethically respond” violates “the spirit of professionalism which we endorsed in the Texas Lawyer’s Creed.” *Id.* at 64, citing *Id.* at 369, citing TEX. LAWYER’S CREED—MANDATE FOR PROFESSIONALISM ART. IV.

Gleason v. Isbell, 145 S.W.3d 354 (Tex. App. – Houston [14 Dist.] 2004, pet. denied) – court noted that when litigants criticize judges and their rulings during court proceedings, they should speak and write civilly using respectful language, because “judges serve as symbols of both the judicial system and administration of justice.” *Id.* at 358, citing TEX. LAWYER’S CREED – MANDATE FOR PROFESSIONALISM ART. IV(1).

In re A.D., 287 S.W.3d 356 (Tex.App.Texarkana 2009, pet. denied) - the court cited the Texas Lawyer’s Creed’s provision that an attorney “will not knowingly misrepresent, mischaracterize, misquote or miscite facts or authorities to gain an advantage...” *Id.* at 369, citing TEX. LAWYER’S CREED—MANDATE FOR PROFESSIONALISM ART. IV(6).

In re Cash Media Systems, Inc., 326 B.R. 655, (Bankr. S.D. Tex. 2005) – court held that an attorney who had misled the Court regarding his membership of the local bar and his command of the local rules violated clause IV of the Texas Lawyer’s Creed which specifically provides that lawyers owe judges candor. *Id.* at 671; *see also* TEX. LAWYER’S CREED – MANDATE FOR PROFESSIONALISM ART. IV.

In re City of Lancaster, 228 S.W.3d 437, 440 and n. 4 (Tex.App.-Dallas 2007) (orig.proceeding) - the court cited the Texas Lawyer’s Creed in explaining counsel’s duty not to misrepresent or mischaracterize legal authorities in mandamus proceeding. *Id.* at 440, citing TEX. LAWYER’S CREED—MANDATE FOR PROFESSIONALISM ART. IV(6).

Schlafly v. Schlafly, 33 S.W.3d 863 (Tex. App. – Houston [14th Dist.] 2001, pet. denied) – court determined that a party had violated section IV of the Texas Lawyer’s Creed by not only misrepresented “the trial court’s actions” but also failed “to disclose material facts appearing in the record that [were] essential.” *Id.* at 872, citing TEX. LAWYER’S CREED – MANDATE FOR PROFESSIONALISM ART. IV(6).

Shaw v. Greater Houston Transp. Co., 791 S.W.2d 204 (Tex. App. – Corpus Christi 1990, no writ) – In *Shaw* “there were many problems and much animosity between appellants’ lawyer and the trial judge.” *Id.* at 211. To emphasize that lawyers have a responsibility to conduct themselves with respect for the tribunal and legal system, the court called attention to the entirety section IV of the Texas Lawyer’s Creed.

F. ORDER OF THE SUPREME COURT AND THE COURT OF CRIMINAL APPEALS

The Supreme Court of Texas and the Court of Criminal Appeals adopted “The Texas Lawyer’s Creed – A Mandate for Professionalism” on November 7, 1989.

Continental Carbon Company v. Sea-Land Service, Inc., 27 S.W.3d 184 (Tex. App. – Dallas 2000, pet. denied) – the court noted that the Texas Lawyer’s Creed is not binding, citing the order issued by the Courts that states: “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 189, citing Order of the Supreme Court of Texas and the Court of Criminal Appeals, promulgating and adopting, TEX. LAWYER’S CREED – MANDATE FOR PROFESSIONALISM.

In re Hasbro, Inc., 97 S.W.3d 894, Tex. App. – Dallas 2003), *judgm't set aside*, No. 05-02-01817-CV, 2003 WL 1983720 (Tex. App.--Dallas Apr. 30, 2003, no pet.) – noting that the Texas Lawyer's Creed is “not a binding rule on which” the court bases its decisions, unlike the disciplinary rules. *Id.* at 892 n.2; *see also Id.* at 583, citing Order of the Supreme Court of Texas and the Court of Criminal Appeals, promulgating and adopting, TEX. LAWYER'S CREED – MANDATE FOR PROFESSIONALISM.

Warrilow v. Norrell, 791 S.W.2d 515 (Tex. App.—Corpus Christi 1989, writ denied) - Justice Nye's concurrence cited the Texas Supreme Court's adoption of the Texas Lawyer's Creed, in determining that the integrity of the legal profession would suffer from the practice of a lawyer acting as both witness and advocate for his client. *Id.* at 531 n.3 (J. Nye, concurring).

VIII. *DONDI PROPERTIES CORP. V. COMMERCE SAVINGS & LOAN ASSN.*

Dondi, a landmark case out of the Northern District of Texas, is frequently cited for legal standards for ethics and professionalism.

Atlantic Recording Corp. v. Heslep, No. 06-cv-132, 2007 WL 1435395 (N.D.Tex. May 16, 2007) - Judge Means, citing *Dondi*, noted that an attorney was properly sanctioned for “opposing discovery unreasonably” and in bad faith. *Id.* at *8.

Blastmyresume.Com LP v. Hoboken Web Servs. LLC, 214 Fed. Appx. 423, 424 (5th Cir. 2007) - distinguishing *Dondi*, the court found that under limited circumstances, a party may withhold requested discovery information without sanctions. *Id.* at 423.

Carnival Corp. v. Beverly, 744 So.2d 489 (Fla. App. 1 Dist. 1999) – the court cited *Dondi's* adoption of standards of litigation conduct for the Northern District of Texas as the basis for sanctions. *Id.* at 467.

Dubose v. Brady, 757 F.Supp. 774 (N.D. Tex. 1991) – the court cited *Dondi* in stating that a party's “manifest record of abusive litigation practices, and disrespectful, deceitful, and contumacious conduct will not be tolerated...” *Id.* at 778 n. 7, citing *Dondi Properties Corp. v. Commerce Sav. & Loan Ass'n*, 121 F.R.D. 284 (N.D. Tex. 1988).

Dymatize Enterprises, Inc. v. Maximum Human Performance, Inc., No. 3:09–CV–046–O, 2010 WL 4788571 (N.D. Tex. Nov. 17, 2010) – the court cited the *Dondi* decision for the proposition that parties should reserve characterization of opposing counsel as acting in bad faith for extreme instances of willful conduct. *Id.* at *4, citing *Dondi Properties Corp. v. Commerce Sav. & Loan Ass'n*, 121 F.R.D. 284, 289 (N.D. Tex. 1988).

FDIC v. Cheng, Nos. CA-3:91-0076-H, 1992 WL 420877 (N.D. Texas Dec. 2, 1992) – the court cited *Dondi's* adoption of standards of litigation conduct for the Northern District of Texas, specifically duties of professional integrity and cooperation, and, “to the judiciary, candor, diligence and utmost respect.” *Id.* at *3, citing *Dondi*, 212 F.R.D. at 287-88.

Illusions–Dallas Private Club, Inc. v. Steen, No. 3:04–CV–0201–B, 2007 WL 4380132, (N.D.Tex. Dec. 13, 2007) - the court cited *Dondi* to encourage the parties to confer regarding the use of exhibits at trial. *Id.* at *5, citing *Dondi Properties Corp. v. Commerce Sav. & Loan Ass'n*, 121 F.R.D. 284, 289-90 (N.D. Tex. 1988) (en banc).

Lelsz v. Kavanagh, 137 F.R.D. 646 (N.D. Tex. 1991) –despite being warned about the *Dondi* standards, the court was forced to remove an offending Assistant Attorney General from further participation in a case due to litigation tactics that “prejudiced the rights of her adversaries and impaired the administration of justice in this case.” *Id.* at 655.

Thomas v. Capital Sec. Servs., Inc., 836 F.2d 866 (5th Cir. 1988) (en banc) – cited by *Dondi* for the range of sanctions that the Fifth Circuit suggests in the Rule 11 context. *Dondi*, 121 F.R.D. at 288, citing *Thomas*, 836 F.2d at 878.

IX. GENERAL ETHICS

Krueger v. Pelican Prod. Corp., No. CIV-87-2385A (W.D. Okla. 1989) – cited most often for Judge Wayne E. Alley’s statement: “[i]f 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.”

Mansfield State Bank v. Cohn, 573 S.W.2d 181 (Tex. 1978) – often cited for the assertion that pro se litigants have no less of an obligation than lawyers to act with respect and civility in their dealings with the court and those who participate in the legal process. *Id.* at 184-85.