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# COMMENT

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## The Texas Lawyer’s Creed: Exploring Its Origin and Impact over the Last Quarter Century

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## I. INTRODUCTION

The Texas Supreme Court and Court of Criminal Appeals adopted the Texas Lawyer’s Creed (Creed) in 1989.<sup>1</sup> The highest state courts in Texas created the Creed to combat abusive Rambo<sup>2</sup> litigation and to reverse the decline in public confidence stemming from these abusive litigation tactics.<sup>3</sup> Texas became one of the first states to take a unified stand

1. See THE TEXAS LAWYER’S CREED—A MANDATE FOR PROFESSIONALISM (1989), reprinted in TEXAS RULES OF COURT: VOLUME 1—STATE 869 (West 2014) (noting November 7, 1989 as the date of the Creed’s adoption).

2. See Craig Enoch, *Incivility in the Legal System? Maybe It’s the Rules*, 47 SMU L. REV. 199, 203 (1994) (tracing the term “Rambo” back to a movie that highlighted a “hero willing to fight to the death” and explaining it is commonly used to describe lawyers resorting to abusive litigation tactics); James W. Walker & Laura Cerniglia, *American Inns of Court: A Return to Civility in Practicing Law*, 52 TEX. B.J. 1306, 1307 (1989) (defining the “Rambo litigator” as a “result-oriented” lawyer driven by money who deviates from the traditional civility standards); Email from Larry Noll, Judge, 408th Dist. Court, Bexar Cty., Tex., to author (Apr. 22, 2015, 6:55 CDT) (on file with the *St. Mary’s Law Journal*) (“Rambo was the movie rage at that time and John Rambo’s tactics in achieving his mission in the movies led to this characterization of similar attributes of lawyers in litigation as well as dealings with one another outside of the traditional litigation practice.”).

3. See CHARLES F. HERRING, JR., TEXAS LEGAL MALPRACTICE & LAWYER DISCIPLINE 675 (13th ed. 2014) (outlining the Creed’s two main goals: “to counteract abusive tactics in litigation, ranging from lack of civility to outright hostility and obstructionism, and to improve generally the

against the deterioration of the legal profession by drafting and adopting a creed.<sup>4</sup> The Creed is influential and a number of cases have cited the Creed over the past twenty-five years as a basis for desired ethical conduct or even sanctions.<sup>5</sup>

However, two unanswered questions remain: (1) whether the Creed achieved its intended purpose,<sup>6</sup> and (2) whether the Creed is still relevant. Shortly after the Creed's adoption, even Justice Eugene Cook of the Texas Supreme Court, who spearheaded the Creed's formation, commented on the difficulty of measuring the Creed's effectiveness.<sup>7</sup> Given that a quarter of a century has passed, a historical review will aid in evaluating the overall effectiveness of the Creed and reveal any potential recommendations for improving its ability to shape the ethical dynamics of the legal profession.

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image of lawyers with the public"); Eugene A. Cook et al., *A Guide to the Texas Lawyer's Creed: A Mandate for Professionalism*, 10 REV. LITIG. 673, 676 (1991) (recalling the two highest state courts in Texas enacted the Creed as a response to the Rambo litigator problem); Catherine M. Stone et al., *Civility in the Legal Profession: A Survey of the Texas Judiciary*, 36 ST. MARY'S L.J. 115, 116 (2004) (noting the Creed was adopted "to restore public confidence in the legal profession, which was believed to be in jeopardy because of the abusive tactics of some lawyers").

4. See Clara Tuma & Darla Morgan, *Two High Courts Approve Statewide Behavior Code*, TEX. LAW., Nov. 13, 1989, at 4 (commenting on the Creed as "the first in the nation to be approved by a state's highest courts"); see also Jonathan E. Smaby & Kelly Frels, *Twenty Years of the Texas Center for Legal Ethics*, 72 TEX. B.J. 838, 839 (2009) ("[I]he Texas Supreme Court and Texas Court of Criminal Appeals weighed in, taking the unprecedented step of adopting . . . the Texas Lawyer's Creed."); Brenda Smith, Comment, *Civility Codes: The Newest Weapons in the "Civil" War over Proper Attorney Conduct Regulations Miss Their Mark*, 24 U. DAYTON L. REV. 151, 159 (1998) (stating Texas courts are the first to adopt a civility code).

5. See James E. Moliterno, *Lawyer Creeds and Moral Seismography*, 32 WAKE FOREST L. REV. 781, 797 (1997) (expressing concern because the Creed has been used as the basis for penalties despite the Creed's aspirational nature). See generally *Twist v. McAllen Nat'l Bank*, 248 S.W.3d 351, 365 (Tex. App.—Corpus Christi 2007, orig. proceeding) (finding guidance in the Creed as a basis for sanctioning groundless petitions); *Tex. Sting, Ltd. v. R.B. Foods, Inc.*, 82 S.W.3d 644, 647 n.3 (Tex. App.—San Antonio 2002, pet. denied) (noting a failure to contact opposing counsel prior to pursuing a default judgment despite the Creed's provisions advising against such action); *Resolution Tr. Corp. v. Tarrant Cty. Appraisal Dist.*, 926 S.W.2d 797, 802 n.4 (Tex. App.—Fort Worth 1996, no writ) ("At a minimum, the RTC's conduct falls within the broad range of 'abusive tactics,' which the Supreme Court of Texas sought to eliminate through its promulgation and adoption of 'The Texas Lawyer's Creed—A Mandate for Professionalism.'").

6. See Gregory Huffman, *The Texas Lawyer's Creed: A Few Observations*, 72 TEX. B.J. 832, 833 (2009) (acknowledging a decline in incivility, but questioning if the Creed was instrumental in the decline); Smaby & Frels, *supra* note 4, at 839 ("[C]ivility and professionalism have improved in the [twenty] years since the Lawyer's Creed was adopted."); Stone et al., *supra* note 3, at 116 (surveying the judiciary and seeking to analyze the Creed's impact).

7. See *Texas Lawyers Told to Be More Polite*, AUSTIN AM.—STATESMAN, Jan. 8, 1990, at B3 (quoting Justice Cook, "It's hard to quantify . . . . It's a battle that we can win, but it's not going to be done overnight").

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## II. PURPOSE STATEMENT

This Comment examines different practical applications of the Creed and addresses the courts' use of the Creed as a guide for desired ethical conduct. Additionally, this Comment includes an appendix of cases in which courts have cited the Creed and incorporates a survey of prominent individuals in the legal profession, including individuals who were instrumental in drafting or adopting the Creed. Part III provides a historical background, detailing the increased incivility within the legal profession and the need for the profession to confront internally the incivility. Understanding the environment that gave birth to the Creed and the profession's drive to organize formal responses to curtail the unethical behavior of attorneys illuminates the Creed's purpose. Part IV explores the promulgation of the Creed, what the drafters hoped to achieve, and briefly analyzes the Creed's provisions. Part V discusses the Creed's evolution, specifically focusing on how the Creed was initially received and the opposition it has encountered. Part VI summarizes the Creed's integration by the judiciary and the legal profession. Part VII provides a current perspective of the Creed from prominent members of the legal community. This Comment concludes with the profession's ability to uphold a high level of civility and professionalism and proposes recommendations for the Creed's future use.

## III. HISTORY OF THE CREED

### A. *The Environment that Preceded the Creed*

Lawyers who confused zealous advocacy with abusive litigation tactics created the environment that prompted the birth of the Texas Lawyer's Creed.<sup>8</sup> Abusive litigation tactics, common among Rambo litigators, posed a problem for the legal community.<sup>9</sup> A few young lawyers, who

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8. See Jonathan E. Smaby & Beverly Godbey, 25: *The Texas Lawyer's Creed and the Texas Center for Legal Ethics Celebrate a Quarter of a Century*, 77 TEX. B.J. 904, 905 (2014) (commenting on the ethical climate in 1989); see also Interview with Nathan Hecht, Chief Justice, Tex. Supreme Court, in Austin, Tex. (Nov. 3, 2014) (on file with the *St. Mary's Law Journal*) (explaining the state of the legal profession in 1989); Interview with Charles Herring, Jr., Partner, Herring & Irwin, LLP, in Austin, Tex. (Oct. 17, 2014) (on file with the *St. Mary's Law Journal*) ("Young lawyers focused solely on winning and financial gain too often tended not to distinguish abusive tactics from zealous advocacy.").

9. See Fred Biery, *Affirmation of the Texas Lawyer's Creed*, 57 TEX. B.J. 1116, 1116 (1994) (calling for lawyers to abide by the Creed, thus perfecting zealous advocacy and avoiding advocacy that prolongs litigation); Jack E. Hunter, *Ethics and the Law: A Return to Professionalism*, 57 TEX. B.J. 1102, 1103 (1994) ("The most obvious problem is that abusive tactics cause limited judicial resources to be

were focused primarily on the business component of the legal profession, relied heavily on abusive litigation tactics because they were driven to accrue billable hours.<sup>10</sup> Chief Justice Nathan Hecht commented on these lawyers: “Although they comprised a small percentage of attorneys, the negative effect of the minority damaged the overall.”<sup>11</sup> These abusive litigation tactics challenged permissible ethical boundaries and often hindered timely resolutions.<sup>12</sup> Notably, this ethical concern was not isolated to Texas; it was a national problem.<sup>13</sup>

Some faulted the minimal standards mandated by ethical rules because the ethical rules did not expressly bar Rambo litigation.<sup>14</sup> As a few, but highly visible, Rambo litigators took center stage,<sup>15</sup> their aggressive tactics

used for disputes that may never be solved.”). *But see* John W. Bickel II & William A. Brewer III, *Professionalism: A Byword for the Old Boy Network?*, TEX. LAW., Aug. 19, 1991, at 18 (proclaiming there is no basis for faulting Rambo litigators because the “wholesale deterioration of ‘professionalism’” is an unproven assumption); William A. Brewer III & John W. Bickel II, *Etiquette of the Advocate?*, TEX. LAW., Mar. 21, 1994, at 20 (asserting the “premise—that ‘hardball’ litigation denigrates the legal profession and ‘threatens to delay the administration of justice’” is wrong and lacks merit).

10. *See* Enoch, *supra* note 2, at 215 (commenting on the prevalence of excessive and often exploitative discovery practices among junior lawyers); *see also* Cook et al., *supra* note 3, at 675 (“[A] small group of lawyers turned away from courtesy, civility, and professionalism.”); Don Willett & Kelly Freels, *Lawyer’s Creed Curbed ‘Sharp Practices’*, HOUS. CHRON., Nov. 22, 2009, at B11 (stating “a few Rambo-like members of the profession” focused on billable hours and created tension regarding other lawyers who were concerned by their behavior); Telephone Interview with Fred Hagans, Partner, Hagans, Burdine, Montgomery & Rustay, PC (Oct. 22, 2014) (on file with the *St. Mary’s Law Journal*) (faulting Rambo litigators, specifically a few young lawyers, for the perceived decline in civility).

11. Interview with Nathan Hecht, *supra* note 8; *see* Roland Johnson, *The Interview: Chief Justice Wallace B. Jefferson on the Values of the Legal Profession, Mentoring, and the Transition to Practice Program*, 76 TEX. B.J. 213, 214 (2013) (relaying an interview with former Chief Justice Wallace B. Jefferson, who declared the abusive litigation by a few lawyers created a disservice to clients and “brought the profession into disrepute”).

12. Interview with Nathan Hecht, *supra* note 8; *see* Fred Hagans, *The Texas Lawyer’s Creed—A Twenty Year Retrospective 4* (Sept. 16, 2010) (unpublished manuscript) (on file with the *St. Mary’s Law Journal*) (outlining a shift from “principle based” actions to “result oriented” actions).

13. *See* Cook et al., *supra* note 3, at 674 (analyzing the lack of civility and proclaiming, “This affliction is not unique to Texas. It is a disease that infects the entire practice of law throughout the United States”); *see also* Moliterno, *supra* note 5, at 795 (“Chief Justice Warren Burger addressed the American Bar Association in 1984 and decried a decline in professionalism.”); Smith, *supra* note 4, at 158 (“Both the ABA and the Seventh Circuit found that changes in the legal profession over the past decade had resulted in many problems . . . . These problems within the legal profession have provoked types of attorney behavior that most agree are in need of correction.”).

14. *See* Smaby & Godbey, *supra* note 8, at 905 (noting the “ethical rules do not strictly prohibit such aggressive behavior” associated with Rambo litigators).

15. *See* Eugene A. Cook, *The Search for Professionalism*, 52 TEX. B.J. 1302, 1302 (1989) (admonishing Rambo litigators because they “do not represent the majority of our profession; they are a minority who achieve media coverage disproportionate to their numbers”); Telephone Interview with Fred Hagans, *supra* note 10 (emphasizing Rambo litigators were a minority group

progressed into abuse of the legal system, which included stalling depositions, filing frivolous claims, and misusing the rules.<sup>16</sup> Lawyers practicing during that time can easily recall examples.<sup>17</sup> Two extreme examples are a single lawsuit that included over 1,500 requests for admissions, and another lawsuit that included a deposition that lasted more than fifty days.<sup>18</sup> For some the focus had shifted from obtaining justice for the client to pursuing all avenues to file sanctions against opposing counsel; often the client's needs were disregarded or forgotten.<sup>19</sup> Over time, some reputable lawyers grew weary of Rambo litigators and left the profession.<sup>20</sup>

Abusive use of discovery sanctions represented a significant part of the problem.<sup>21</sup> Prior to the 1980s, discovery sanctions did not exist in state or federal courts.<sup>22</sup> Courts always had the inherent power to sanction lawyers, but they rarely exercised this power.<sup>23</sup> When Federal Rule 11<sup>24</sup>

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whose behavior was highly publicized).

16. See Telephone Interview with Fred Hagens, *supra* note 10 (explaining how abusive tactics, such as unnecessarily prolonging depositions for several days and filing meritless claims, interfered with the effectiveness of the legal system); see also Smith, *supra* note 4, at 158 (expanding on the abrasive and combative tactics practiced by some lawyers). But see William A. Brewer III & Francis B. Majorie, *One Year After Dondi: Time to Get Back to Litigating?*, 17 PEPP. L. REV. 833, 845–46 (1990) (“[T]here is no proof that ‘Rambo’ litigators delay their cases.”).

17. Interview with Nathan Hecht, *supra* note 8; Interview with Charles Herring, Jr., *supra* note 8; see also Walker & Cerniglia, *supra* note 2, at 1307–08 (depicting examples of abusive litigation); Email from Kelly Frels, Senior Counsel, Bracewell & Giuliani LLP, to author (Oct. 20, 2014, 13:45 CDT) (on file with the *St. Mary's Law Journal*) (remembering the aggressiveness of lawyers to have been more frequent and more severe before the Creed was created).

18. Telephone Interview with Fred Hagens, *supra* note 10.

19. Interview with Nathan Hecht, *supra* note 8; Telephone Interview with Jay Madrid, Shareholder, Winstead PC (Nov. 4, 2014) (on file with the *St. Mary's Law Journal*). *Contra* Brewer III & Majorie, *supra* note 16, at 841 (asserting the proclaimed decline in civility is an unsupported assumption).

20. See Letter from Stephen W. Dallagher to Eugene A. Cook, Justice, Tex. Supreme Court (undated), [https://www.legalethicstexas.com/Downloads/Texas-Lawyers-Creed/Letter-Commenting-on-Adoption-of-Creed\\_2.aspx](https://www.legalethicstexas.com/Downloads/Texas-Lawyers-Creed/Letter-Commenting-on-Adoption-of-Creed_2.aspx) (stating Dallagher left the practice of law in 1983 because of Rambo litigation); Letter from Woodfin C. Henderson, McCrory, Henderson & Brooks, to Eugene A. Cook, Justice, Tex. Supreme Court (Jan. 8, 1990), <https://www.legalethicstexas.com/Downloads/Texas-Lawyers-Creed/Letter-of-Appreciation---Woodfin-Henderson.aspx> (writing he is tired of abusive litigation and desires fun practicing law again); see also Hunter, *supra* note 9, at 1104 (stating “[m]ost lawyers are weary of the endless slurs parading as wit”). But see Enoch, *supra* note 2, at 203 (dismissing the notion that Rambo litigators caused anything because Rambo litigation is not a recent development).

21. Interview with Nathan Hecht, *supra* note 8; see also Stone et al., *supra* note 3, at 118 (relaying how lawyers manipulated discovery rules to hide the truth, thus cultivating incivility); Hagens, *supra* note 12, at 2 (listing abuse of discovery rules as one of the three reasons the Creed was needed).

22. Interview with Nathan Hecht, *supra* note 8.

23. *Id.*; see also Enoch, *supra* note 2, at 222 (indicating a period of time where courts did exercise

was amended, most federal judges were relieved and welcomed an avenue for sanctioning lawyer misconduct stemming from the abuse of the discovery process.<sup>25</sup> Consequently, federal judges began sanctioning lawyers for discovery abuse as a way to curtail abusive litigation.<sup>26</sup> Meanwhile—in state courts—there was only a motion to produce, so the state's procedure was further removed from sanctioning.<sup>27</sup> When federal courts acquired sanctioning powers, Hecht recalled: "Everybody wanted sanctions. It was the new toy."<sup>28</sup> As a response, state courts adopted rules—such as Texas Rules of Civil Procedure Rules 13 and 215—for the purpose of sanctioning attorneys.<sup>29</sup> Regrettably, sanctions were counterproductive because lawyers engaged in what Hecht described as a "tit-for-tat" sanction battle, which clogged the judicial system.<sup>30</sup>

Hecht stated: "If you had proposed adopting a Creed in 1975, most would have said, 'Why, is there a problem?,' but by 1979 it was a

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their inherent power and sanctions lawyers for abusive tactics); Travis C. Headley, Comment, *Creative Sanctions for Discovery Abuse in Texas*, 32 ST. MARY'S L.J. 115, 128 (2000) (discussing some of the authorities through which courts have the power to impose sanctions).

24. See FED. R. CIV. P. 11 advisory committee's note (1983 Amendment) ("Authority to [impose sanctions] has been made explicit . . .").

25. Interview with Nathan Hecht, *supra* note 8; see also Sandra L. DeGraw & Bruce W. Burton, *Lawyer Discipline and "Disclosure Advertising": Towards a New Ethos*, 72 N.C. L. REV. 351, 371 (1994) (affirming federal judges' reliance on Rule 11 as a sanctioning tool to deter abusive litigation); Enoch, *supra* note 2, at 217–18 (implying federal courts were initially hopeful when Rule 11 was amended, but criticizing the amendment because it failed to "discourage dilatory or abusive tactics and help to streamline the litigation process by lessening frivolous claims or defenses"); Alex Wilson Albright, *Waging Unconditional Warfare: An Exasperated Court Speaks Its Mind*, TEX. LAW., Sept. 5, 1988, at 18 (explaining how abusive lawyers misused Rule 11 and relied on unnecessary contentions).

26. Interview with Nathan Hecht, *supra* note 8; see also Enoch, *supra* note 2, at 216 (citing an increase in the number of discovery sanctions following amendments to various federal rules).

27. Interview with Nathan Hecht, *supra* note 8.

28. *Id.*

29. *Id.*; see also *Downer v. Aquamarine Operators, Inc.*, 701 S.W.2d 238, 242 (Tex. 1985) (commenting on state courts' use of discovery sanctions after the adoption of Rule 215); David J. Beck, *Sanction Under New Rule 13: A More Effective Tool to Prevent Overzealous Advocacy*, 51 TEX. B.J. 1120, 1120–24 (1988) (praising Rule 13's ability to combat abusive advocacy); Hagans, *supra* note 12, at 3 (recognizing Rule 13's role in the judiciary); Headley, *supra* note 23, at 129–30 (stating Rule 215's enactment by the state courts mirrored Federal Rule 37, which provides for sanctioning discovery abuse).

30. Interview with Nathan Hecht, *supra* note 8; see also Enoch, *supra* note 2, at 215 (recognizing a historically abusive use of discovery rules and motions utilized to "tease, worry, irk, goad, pester, trouble, rag, torment, pique, molest, bother, vex, nettle, and annoy each other" (quoting WALTER K. OLSON, *THE LITIGATION EXPLOSION: WHAT HAPPENED WHEN AMERICA UNLEASHED THE LAWSUIT 229* (1991))); Albright, *supra* note 25, at 18 ("Professional dignity and integrity degenerates into a game of tit-for-tat."); cf. Headley, *supra* note 23, at 129–30 (concluding Rule 215 did not reduce abusive litigation).

completely different atmosphere.”<sup>31</sup> Lawyers and their clients were paying sanctions and a substantial amount of disenchantment plagued the bar.<sup>32</sup> Lawsuits decided on the merits were rare and the use of sanctions served only to infuriate people.<sup>33</sup> Hecht faults sanctions for the constant discord in the profession and overall “meanness.”<sup>34</sup> Sanctions instigated collateral sniping by attorneys because attorneys thought they could get money simply by making opposing counsel look corrupt.<sup>35</sup> Eventually, courts reigned in their use of sanctions.<sup>36</sup> After fifteen years in federal courts and ten years in state courts, judges realized sanctions did not work and a need arose for a remedy to the problems within the legal profession.<sup>37</sup>

Similarly, the public’s negative perception of the legal profession continued to build as they became spectators to these “tit-for-tat” sanction battles.<sup>38</sup> In *Dondi Properties Corp. v. Commerce Savings and Loan Ass’n*,<sup>39</sup> the U.S. District Court for the Northern District of Texas took an unprecedented step and “convened the en banc court for the purpose of establishing standards of litigation conduct to be observed in civil

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31. Interview with Nathan Hecht, *supra* note 8; see Letter from Woodfin C. Henderson to Eugene A. Cook, *supra* note 20 (reminiscing about his legal career and indicating that in 1975, lawyers practiced a more collaborative law and the use of notices and sanctions were rare).

32. Interview with Nathan Hecht, *supra* note 8; see also DeGraw & Burton, *supra* note 25, at 375–76 (advising clients to be wary of the possibility that they could also be liable for Rule 11 sanctions imposed on their attorney); William I. Weston, *Court-Ordered Sanctions of Attorneys: A Concept that Duplicates the Role of Attorney Disciplinary Procedures*, 94 DICK. L. REV. 897, 905–06, 910 (1990) (addressing the influx of sanctions and their effect on clients and stating “[c]lients may be and often are the subjects of sanctions”).

33. Interview with Nathan Hecht, *supra* note 8; see also Weston, *supra* note 32, at 926 (concluding some lawyers abused the system and filed for sanctions solely to cause “vexation and harassment”).

34. Interview with Nathan Hecht, *supra* note 8.

35. *Id.*; see also Enoch, *supra* note 2, at 203 (condemning the Texas sanctioning rules for exacerbating the adversarial nature of the judicial system, evidenced by lawyers abusively using them to penalize opposing counsel).

36. Interview with Nathan Hecht, *supra* note 8; see also DeGraw & Burton, *supra* note 25, at 378 (listing “courts’ significant distaste for monetary sanctions” as a reason to pursue other avenues for curtailing Rambo litigation); Stone et al., *supra* note 3, at 130 (conveying a judge’s personal experience with sanctions and a personal conviction that sanctions are a last resort).

37. Interview with Nathan Hecht, *supra* note 8; see also Weston, *supra* note 34, at 914 (summarizing the use of sanctions and stating they produced more meritless litigation).

38. See DeGraw & Burton, *supra* note 25, at 392 (stressing a “crisis of confidence” resulting from the public’s severe lack of confidence in the legal profession); Tuma & Morgan, *supra* note 4, at 4 (quoting James “Blackie” Holmes, who said the Creed was necessary because of a recent “meltdown in manners” among lawyers); Interview with Jonathan E. Smaby, Exec. Dir., Tex. Ctr. for Legal Ethics, in Austin, Tex. (Oct. 17, 2014) (on file with the *St. Mary’s Law Journal*) (analyzing the potential causes for the negative perception of the legal profession). *But see* Brewer III & Majorie, *supra* note 16, at 843 (attributing the perceived decline to the media’s distortion of reality).

39. *Dondi Props. Corp. v. Commerce Sav. & Loan Ass’n*, 121 F.R.D. 284 (N.D. Tex. 1988).

actions.”<sup>40</sup> *Dondi* reflected the judiciary’s desire to curtail abusive litigation tactics.<sup>41</sup> Notably, the *Dondi* court used the Dallas Bar Association’s Lawyer’s Creed as a basis for establishing conduct standards.<sup>42</sup> This judicial response reflected the actions of concerned lawyers who also sought ways to restore civility and the reputation of the legal profession.<sup>43</sup>

#### B. *Local Bar Associations Pursue Methods to Reclaim Civility*

Local organizations proactively sought to address this undesirable behavior because traditional methods were deemed inadequate.<sup>44</sup> Restoring civility began at a city-wide level as bar associations organized committees to combat the perceived deterioration of the profession.<sup>45</sup>

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40. *Id.* at 286; see Stephen E. Kalish, *How to Encourage Lawyers to Be Ethical: Do Not Use the Ethics Codes as a Basis for Regular Law Decisions*, 13 GEO. J. LEGAL ETHICS 649, 661 n.52 (2000) (describing *Dondi*’s holding as “a unique procedure, [in which] the *en banc* court adopted the standards in Part II of its opinion, and it permitted the magistrate handling the motions to apply them in Part III”); Smith, *supra* note 4, at 168 (declaring the court in *Dondi* as the first to adopt ethical standards in a disciplinary proceeding).

41. See *Dondi*, 121 F.R.D. at 286 (noting the judiciary “can ill-afford to devote scarce resources to supervising matters that do not advance the resolution of the merits of a case”); Enoch, *supra* note 2, at 200 (commenting on *Dondi*’s decision as a “response to ‘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” (citation omitted)). *But see* Brewer III & Bickel II, *supra* note 9, at 20 (“*Dondi* established ‘standards of litigation conduct to observed in civil actions litigated in the Northern District of Texas’ as a purported solution to an arguably non-existent problem.” (quoting *Dondi*, 121 F.R.D. at 286)).

42. See *Dondi*, 121 F.R.D. at 287 (“The Dallas Bar Association recently adopted . . . a ‘Lawyer’s Creed’ that [is] both sensible and pertinent . . . . [W]e adopt the following . . . to be observed by attorneys appearing in civil actions in this district.” (footnotes omitted)); Moliterno, *supra* note 5, at 797, 799 (“[The *Dondi*] court’s adoption of standards . . . were taken nearly verbatim from . . . Dallas Bar Association documents.”); see also David Grenardo, *Making Civility Mandatory: Moving from Aspired to Required*, 11 CARDOZO PUB. L. POLY & ETHICS J. 239, 265 (2013) (noting the *Dondi* court incorporated language from the Dallas Bar Association).

43. See Cook et al., *supra* note 3, at 676 (holding “lawyers and judges must provide the remedy” for the decline in professionalism); Telephone Interview with Fred Hagans, *supra* note 10 (emphasizing a concern among lawyers lead to his involvement in drafting the Houston Bar Association’s Creed aimed at reshaping the civility of Houston lawyers).

44. See Jeanette Ahlenius, *Do We Toss Them or Teach Them? The Lawyer as a Professional*, 57 TEX. B.J. 1090, 1092 (1994) (identifying professionalism to be more than the minimum standards set by the Rules); Huffman, *supra* note 6, at 833 (establishing a timeline for the different professional codes implemented to combat incivility). *But see* Brewer III & Majorie, *supra* note 16, at 844 (reprimanding the use of codes because they are unnecessary and ignore existing remedies capable of curtailing Rambo litigators).

45. Harlow Sprouse, *A Sinner’s Perspective*, 57 TEX. B.J. 1106, 1106 (1994) (explaining how the “Texas Trial Lawyers Association and Texas Association of Defense Counsel implemented their joint guidelines for professionalism”); Tuma & Morgan, *supra* note 4, at 4 (listing the different organizations to adopt a creed—the list includes the Texas Trial Lawyers’ Association and Texas Association of Defense Counsel).

These committees drafted creeds aimed at reminding lawyers of the need to respect the profession.<sup>46</sup> Houston and Dallas were labeled the centers of incivility,<sup>47</sup> primarily because lawyers lacked motive to refrain from Rambo litigation because it was assumed they would not have to interact with opposing counsel in the near future.<sup>48</sup> The large size of these associations made it difficult to foster long-term professional relationships.<sup>49</sup> Additionally, technological advancements spurred more incivility because lawyers could easily send contentious comments—often ones they would not have made in person—via email without taking time to consider the ramifications of such comments.<sup>50</sup>

The Dallas Bar Association, the first bar association in Texas to adopt a creed, commenced a positive trend.<sup>51</sup> As previously mentioned, the *Dondi* court incorporated the Dallas Bar Association Creed into its opinion. The Houston Bar Association quickly followed and adopted its own creed.<sup>52</sup>

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46. See Ahlenius, *supra* note 44, at 1092 (mentioning a series of creeds drafted to combat incivility); Brewer III & Majorie, *supra* note 16, at 844 (commenting on the different codes attempting to remedy problems plaguing the legal profession); Cook et al., *supra* note 3, at 691 (viewing the bar associations enactment of creeds as an effort to restore professionalism); Enoch, *supra* note 2, at 220 (explaining the use of creeds by bar associations to restrict frivolous lawsuits and promote cooperation among parties); Sprouse, *supra* note 45, at 1106 (stating bar associations have followed the Dallas Bar Association and drafted their own creeds).

47. Telephone Interview with Fred Hagans, *supra* note 10; Telephone Interview with Jay Madrid, *supra* note 19; Interview with Jonathan E. Smaby, *supra* note 38. *But see* Bill Whitehurst, *A Plaintiff Attorney's Perspective*, 57 TEX. B.J. 1099, 1099 (1994) (asserting it was not a fair statement to label Dallas as the center for incivility because it was a statewide problem).

48. See Interview with Charles Herring, Jr., *supra* note 8 (stating the large size of the Houston bar meant “you could potentially try a case and never again have another case with that same opposing counsel”); Interview with Jonathan E. Smaby, *supra* note 38 (attributing some of the decline to the larger size of the Dallas and Houston bars).

49. See Donald E. Campbell, *Raise Your Right Hand and Swear to Be Civil: Defining Civility as an Obligation of Professional Responsibility*, 47 GONZ. L. REV. 99, 105 (2012) (“[T]he increase in the heterogeneity of the bar has led to less camaraderie among lawyers and a corresponding decrease in civility.”); Huffman, *supra* note 6, at 833 (noting the influx of lawyers increased the size of the bar and hindered cohesiveness previously achieved); Smaby & Frels, *supra* note 4, at 838 (attributing one of the problems in Texas arises from the vast size of organizations); Hagans, *supra* note 12, at 3 (faulting a loss of cohesiveness stemming from the large size of bar associations).

50. Telephone Interview with Fred Hagans, *supra* note 10; *see also* Cook et al., *supra* note 3, at 673 (alluding to technology’s role in fostering uncivil conduct among lawyers).

51. See Cook, *supra* note 15, at 1302 (crediting the Dallas Bar Association as the first in Texas to draft and adopt a creed); Enoch, *supra* note 2, at 213–14 (recognizing Dallas Bar Association’s civility code and its inspirational effect on other bar associations who later implemented civility codes).

52. See Cook, *supra* note 15, at 1302 (noting the Houston Bar Association followed the Dallas Bar Association and drafted its own creed); James H. “Blackie” Holmes III, Remarks at the 20th Anniversary of the Texas Lawyer’s Creed 1–2 (Apr. 25, 2010) (transcript on file with the *St. Mary’s Law Journal*) (“[I]n 1987[,] when the Dallas Bar Association . . . perceived the deterioration or erosion in professionalism[,] . . . [it] drafted and adopted the guidelines of professionalism and the Lawyer’s

The discussions initiated by these organizations were instrumental to the adoption of the Texas Lawyer's Creed promulgated by the Texas Supreme Court and Court of Criminal Appeals.<sup>53</sup>

#### IV. PROMULGATION OF THE TEXAS LAWYER'S CREED

##### A. *The Formation of the Texas Supreme Court Advisory Committee on Professionalism*

Texas Supreme Court Justice Eugene Cook, nicknamed the "father of professionalism," spearheaded the promulgation of the Creed.<sup>54</sup> James H. "Blackie" Holmes III contacted Cook to seek his involvement.<sup>55</sup> After attending an American Bar Association program in Chicago, Cook decided to pursue measures to address formally the incivility and unprofessionalism spreading throughout Texas.<sup>56</sup> Cook then prompted the court to create the Advisory Committee on Professionalism (Committee).<sup>57</sup> He carefully selected representatives from different areas

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Creed for the Dallas Bar Association.").

53. See Fred Hagans, Remarks at the 20th Anniversary of the Texas Lawyer's Creed 3 (Apr. 25, 2014) (transcript on file with the *St. Mary's Law Journal*) (discussing how the drafting committee for the Creed considered the creeds from other bars and acknowledging the Creed are a product of these discussions); Telephone Interview with David Keltner, Partner, Kelly Hart & Hallman, LLP (Nov. 20, 2014) (on file with the *St. Mary's Law Journal*) (explaining how the committee responsible for the Creed carefully parsed the creeds of the Houston and Dallas bars).

54. See *History of the Texas Lawyer's Creed*, TEX. CTR. FOR LEGAL ETHICS, <https://www.legalethictexas.com/Ethics-Resources/Rules/Texas-Lawyer-s-Creed/History-of-the-Texas-Lawyer-s-Creed.aspx> (last visited Jan. 4, 2016) (discussing Justice Cook's role as the "father of professionalism"); see also Tuma & Morgan, *supra* note 4, at 4 ("Justice Eugene Cook . . . spearheaded the move to adopt a behavior code for Texas lawyers after win-at-all cost litigators began gaining prominence."); Email from Kelly Frels, *supra* note 17 (attributing the Creed's success to Justice Cook).

55. Telephone Interview with David Keltner, *supra* note 53.

56. See Cook, *supra* note 15, at 1302 (relaying Cook "attended a conference in Chicago sponsored by the American Bar Association" prior to forming the Committee); Hagans, *supra* note 12, at 2 (stating "Justice Eugene Cook attended an ABA Program in Chicago" and returned eager to address the incivility in Texas); see also Lamar McCorkle, Remarks at the 20th Anniversary of the Texas Lawyer's Creed 2 (Apr. 25, 2014) (transcript on file with the *St. Mary's Law Journal*) ("[Cook] had been at an ABA conference, he recognized there was a problem in Texas and he didn't realize how large it had gotten until he got involved in discussions.").

57. See Fred Hagans et al., *Reflections on the Texas Lawyer's Creed*, 72 TEX. B.J. 834, 836 (2009) (citing Cook who expressly stated his desire to "use the influence of the [c]ourt to address the problem"); Memorandum from Eugene A. Cook, Justice, Tex. Supreme Court (May 22, 1989), <http://www.legalethictexas.com/Downloads/Texas-Lawyers-Creed/Supreme-Court-Memo-Regarding-Committee-Formation.aspx> (outlining Justice Cook's request that the Texas Supreme Court form a Supreme Court Advisory Committee on Professionalism); see also Interview with Nathan Hecht, *supra* note 8 (crediting Justice Cook for initiating and creating the Committee tasked

of law to form a balanced Committee.<sup>58</sup> Appointees represented various legal organizations.<sup>59</sup> Cook also purposefully selected members from Houston and Dallas—the infamous centers of Rambo litigation.<sup>60</sup> Sixteen influential lawyers, all interested in restoring civility and professionalism, were appointed to the Committee; members included the drafters of the Houston and Dallas Bar Associations' creeds.<sup>61</sup> Of these sixteen, five were selected for a subcommittee tasked with drafting the Creed.<sup>62</sup>

Cook initially desired to “add teeth” to the Creed by including sanctions for violations.<sup>63</sup> Committee members briefly discussed sanctions, but the court preferred an “uplifting and aspirational” creed because the court did not want the Creed to have the force of new law.<sup>64</sup> Committee members unanimously agreed with the court because they were wary of creating

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with drafting the Creed).

58. Telephone Interview with Fred Hagans, *supra* note 10 (explaining Justice Cook's approach for selecting the Committee); Telephone Interview with David Keltner, *supra* note 53.

59. *See* Cook, *supra* note 15, at 1302 (illustrating the diversity evidenced by the following included organizations: American Board of Trial Advocates, American College of Trial Lawyers, Corpus Christi Bar Association, Dallas Bar Association, Houston Bar Association, members of the judiciary, San Antonio Bar Association, State Bar of Texas, Texas Association of Defense Counsel, Texas Bar Foundation, Texas Trial Lawyers, Texas Young Lawyers Association, and Travis County Bar Association); Telephone Interview with Fred Hagans, *supra* note 10 (recalling the different groups represented on the Committee).

60. *See* Telephone Interview with Fred Hagans, *supra* note 10 (describing his role on the Committee and suggesting he was included based on being from Houston and because he drafted the Houston Bar Association's creed).

61. *See* Hagans, *supra* note 12, at 2–3 (listing members as Judge Norman Black, Judge Lamar McCorkle, David Keltner, David Burrow, Tom H. Davis, Dean Frank Newton, Dean Charles Barrow, Bob Sheehy, Jim Branton, and James H. “Blackie” Holmes III), *see also* Letter from Norman W. Black, S. Dist. Judge, to Eugene A. Cook, Justice, Tex. Supreme Court (June 8, 1989), <http://www.legalethicstexas.com/Downloads/Texas-Lawyers-Creed/Letter-Accepting-Appointment-%E2%80%93-Judge-Norman-Black.aspx> (writing to express his desire to restore professionalism because of his recent encounters with attorneys who acted poorly). *Compare* Memorandum from Eugene A. Cook, *supra* note 57 (“[The] committee would be composed of representatives from different groups throughout the state . . .”), *with* Memorandum from Eugene A. Cook, Justice, Tex. Supreme Court, to the Judges of the Tex. Supreme Court (Sep. 25, 1989), <http://legalethicstexas.com/Downloads/Texas-Lawyers-Creed/Supreme-Court-Memo-Regarding-Draft-of-Creed.aspx> (“This [C]reed is the result of a tremendous amount of work by groups representing a cross segment of our profession.”).

62. Telephone Interview with David Keltner, *supra* note 53; *see also* Hagans, *supra* note 12, at 3 (listing drafting subcommittee members as Fred Hagans, James H. “Blackie” Holmes III, Judge Norman Black, Judge Lamar McCorkle, and David Keltner).

63. Memorandum from Eugene A. Cook, *supra* note 57 (“The results of this [C]ommittee's work will be turned over to Justice Hecht's rules committee so that they can add whatever appropriate sanctions are necessary in order to put teeth in the Code of Professionalism.”).

64. Interview with Nathan Hecht, *supra* note 8; Telephone Interview with Fred Hagans, *supra* note 10; Telephone Interview with David Keltner, *supra* note 53.

more rules that Rambo litigators would use as “ammunition.”<sup>65</sup> The Committee sought to create an aspirational document embodying a vision of improved civility and restored professionalism that would be championed statewide.<sup>66</sup> The inclusion of broad categories of professionalism implicitly reflects the Committee’s desire for an aspirational model.<sup>67</sup> They agreed the final draft would have to be approved unanimously because it was important to have a unified response and to avoid a subpar product that only satisfied a majority.<sup>68</sup>

The Houston Bar Association Creed and the Dallas Bar Association Creed were fundamental because these creeds were merged to create the first draft.<sup>69</sup> Approximately four months of collaboration followed until the final draft emerged.<sup>70</sup> During this time, members engaged in spirited

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65. Interview with Nathan Hecht, *supra* note 8; *see also* Letter from Eugene A. Cook, Justice, Tex. Supreme Court, to the Lawyers of Tex. (Dec. 22, 1989), <http://legalethicstexas.com/Downloads/Texas-Lawyers-Creed/Letter-to-Lawyers-Announcing-Adoption-of-Creed.aspx> (announcing the Creed’s purpose and stating it is not to be used for “ancillary litigation”).

66. Telephone Interview with Fred Hagans, *supra* note 10; Interview with Nathan Hecht, *supra* note 8; *see also* Hagans et al., *supra* note 57, at 836 (commenting on the Committee members and their “spirit of common calling”); Smaby & Frels, *supra* note 4, at 839 (describing the motivation of the Committee to impart a permanent devotion to ethics).

67. *See* Hagans, *supra* note 53, at 3 (“[W]hat we were trying to do was to give people also an aspiration of doing more . . . . To move the other direction from the least/worst conduct to better/best/admirable conduct.”); *accord* Antonio “Tony” Alvarado, *A Radical Proposal for Lifetime Professionalism*, 37 ST. MARY’S L.J. 1053, 1068 (2006) (“The Texas Lawyer’s Creed initiates the aspirations of the legal profession with the oath: ‘My word is my bond.’”).

68. *See* Telephone Interview with Fred Hagans, *supra* note 10 (confirming the final draft of the Creed required a unanimous vote); *see also* Hagans et al., *supra* note 57, at 834 (expressing the Committee’s goal to achieve “the best possible product”); Memorandum from Eugene A. Cook to the Judges of the Tex. Supreme Court, *supra* note 61 (announcing the final draft of the Creed and stating its unanimous approval by the Committee).

69. Telephone Interview with David Keltner, *supra* note 53; *see also* Huffman, *supra* note 6, at 833 (explaining the Dallas Bar Association’s influence on the Texas Lawyer’s Creed); Telephone Interview with Fred Hagans, *supra* note 10 (emphasizing how both the Dallas Bar Association and Houston Bar Association’s creeds predated the Creed and were fundamental components of the Creed).

70. *See* Telephone Interview with Fred Hagans, *supra* note 10 (remembering the process “lasted maybe three to four months”); *Texas Lawyer’s Creed Timeline*, TEX. CTR. FOR LEGAL ETHICS, [www.legalethicstexas.com/Ethics-Resources/Rules/Texas-Lawyer-s-Creed/Texas-Lawyer-s-Creed-Timeline.aspx](http://www.legalethicstexas.com/Ethics-Resources/Rules/Texas-Lawyer-s-Creed/Texas-Lawyer-s-Creed-Timeline.aspx) (last visited Jan. 4, 2016) (outlining a historical timeline depicting the drafting period from June to August). *Compare* Letter from Eugene A. Cook, Justice, Tex. Supreme Court, to Lamar McCorkle, Judge, 133rd Dist. Court, Harris Cty, Tex., (June 19, 1989), <http://legalethicstexas.com/Downloads/Texas-Lawyers-Creed/Committee-Appointment-Letter.aspx> (stating June 24, 1989 as the Committee’s first meeting), *and* Letter from James H. Holmes III, Burford & Ryburn, to Fred Hagans, Hagans & Sydow (July 24, 1989) <http://legalethicstexas.com/Downloads/Texas-Lawyers-Creed/Letter-Regarding-Committee-Meeting.aspx> (relaying comments regarding a draft of the Creed), *with* Memorandum from Eugene A. Cook to the Judges of the Tex. Supreme Court, *supra* note 61 (announcing the final draft of the Creed).

discussions and shared their encounters with incivility and unprofessional behavior to aid in drafting a creed capable of addressing all areas of misconduct.<sup>71</sup> Some Committee members were tasked with a substantial amount of research.<sup>72</sup> Judge Lamar McCorkle recalls “researching lawyer licenses, oaths, and codes of conduct in use across the country.”<sup>73</sup> He further stated, “[T]he Creed gave voice to the cornerstones and timeless principles of justice and fairness of [the] profession.”<sup>74</sup> The final draft underwent minimal edits and was approved unanimously.<sup>75</sup> The Texas Supreme Court and Texas Court of Criminal Appeals adopted the Texas Lawyer’s Creed on November 7, 1989.<sup>76</sup> The Creed has been reaffirmed but never modified—a testament to the Committee’s success.<sup>77</sup>

B. *The Committee’s Objectives for the Creed*

The drafters of the Creed hoped it would impact the legal profession by curtailing conduct exhibited by Rambo litigators, reversing the trend of declining civility within the legal profession, and improving the profession’s reputation.<sup>78</sup> Additionally, the Committee envisioned four primary purposes for the Creed: (1) to confront the media’s distorted models of lawyer behavior by educating clients and the public, so they could understand what is expected of lawyers, (2) to provide a “written

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71. Telephone Interview with Fred Hagans, *supra* note 10 (discussing some of the conversations that led to the final draft of the Creed); see Hagans, *supra* note 12, at 3 (expanding on the conversations of the Committee and describing them as vigorous).

72. See Hagans et al., *supra* note 57, at 837 (noting this research revealed “what it means to be called to a profession”); see also Letter from Eugene A. Cook to Lamar McCorkle, *supra* note 70 (alerting McCorkle to the fifteen copies of various professional creeds that were enclosed so that McCorkle could review the creeds before a Committee meeting).

73. Hagans et al., *supra* note 57, at 837.

74. See *id.* (quoting Judge Lamar McCorkle, one of the Committee members).

75. Telephone Interview with Fred Hagans, *supra* note 10; Telephone Interview with David Keltner, *supra* note 53; see also Cook, *supra* note 17, at 1302; Hagans et al., *supra* note 57, at 837 (writing Judge Lamar McCorkle attributed the ease of drafting the Creed to the balance of the Committee).

76. THE TEXAS LAWYER’S CREED—A MANDATE FOR PROFESSIONALISM, *supra* note 1, at 869–71; see also Sprouse, *supra* note 45, at 1106 (“On Nov. 7, 1989, the Supreme Court of Texas and Texas Court of Criminal Appeals jointly adopted ‘The Texas Lawyer’s Creed—A Mandate for Professionalism.’”).

77. See Smaby & Godbey, *supra* note 8, at 907 (recognizing the Texas State Bar’s work in initiating the Creed’s reaffirmation in April 2013); Sprouse, *supra* note 45, at 1106 (acknowledging the Creed has not been changed).

78. See HERRING, JR., *supra* note 3, at 675 (“The primary purposes of the Creed are to counteract abusive tactics in litigation, ranging from ‘lack of civility to outright hostility and obstructionism,’ and to improve generally the image of lawyers with the public.”); Willett & Frels, *supra* note 10, at B11 (delineating the Creed’s focus to restore civility and curb the Rambo litigation).

mentor” for lawyers in a need of guidance, (3) to promote a time for personal reflection and foster a voluntary personal commitment to the Creed, and (4) to enunciate recommended aspirational standards.<sup>79</sup> The Creed applies to all lawyers licensed in Texas.<sup>80</sup> It clearly identifies four main duties: (1) duties to the legal system, (2) duties to clients, (3) duties to other lawyers, and (4) duties to and from judges.<sup>81</sup>

As previously indicated, the purposeful first-person wording of the Creed fosters a time of self-reflection and directs the reader to personally acknowledge the concepts it embodies.<sup>82</sup> It was also written in simplistic language so the public and lawyers could all understand the principles it sought to promote.<sup>83</sup> Although the Creed encompasses provisions that range from specific to broad,<sup>84</sup> it primarily focuses on duties related to opposing counsel.<sup>85</sup>

79. Telephone Interview with Fred Hagans, *supra* note 10; Telephone Interview with David Keltner, *supra* note 53.

80. See THE TEXAS LAWYER'S CREED—A MANDATE FOR PROFESSIONALISM, *supra* note 1, at 870–71 (addressing all lawyers licensed in Texas); see also Royal Furgeson, *Should the Federal Courts of Texas Adopt the Texas Lawyer's Creed?*, 57 TEX. B.J. 1110, 1110 (1994) (suggesting federal courts endorse the Creed because it applies to all Texas lawyers); David A. Grenardo, *An Uprising of Civility in Texas*, 5 HLRE 1, 8 (2014), <http://www.houstonlawreview.org/wp-content/uploads/2014/09/Grenardo-David-Final.pdf> (citing the Creed and asserting its application to all lawyers in Texas); C.E. Rhodes, *Carrying the Torch Forward*, 75 TEX. B.J. 236, 236 (2012) (“Every Texas lawyer is responsible for understanding and complying with the [C]reed.”).

81. THE TEXAS LAWYER'S CREED—A MANDATE FOR PROFESSIONALISM, *supra* note 1, at 869–71; see also HERRING, JR., *supra* note 3, at 676 (outlining the four different duties provided by the Creed); Rhodes, *supra* note 80, at 236 (“The [C]reed sets forth standards respecting the legal system, clients, colleagues, and the judiciary to which every Texas lawyer should be committed.”).

82. See Hagans et al., *supra* note 57, at 837 (commending the use of the word “I” to invoke a personal commitment); see also Ahlenius, *supra* note 44, at 1092 (implying the Creed’s use of first-person language is a way to guide individual aspirations); Alvarado, *supra* note 67, at 1068–69 (noting the Creed instills an attorney with a personal commitment to “be courteous, civil and prompt”); cf. Carol Rice Andrews, *The Lawyer's Oath: Both Ancient and Modern*, 22 GEO. J. LEGAL ETHICS 3, 55 (2009) (recognizing an oath can serve as a personal time for ethical reflection because merely reciting an oath reminds a lawyer of her ethical duties).

83. See Whitehurst, *supra* note 47, at 1099 (approving the Creed’s straightforward language that ensures the Creed is “easily understood by the lawyer and nonlawyer alike”); Email from Kelly Frels, *supra* note 17 (commending the Creed’s simple language when asked about potential improvements for the Creed). *But see* Email from John W. Bickel II, Of Counsel, Fish & Richardson PC, to author (Nov. 4, 2014, 17:06 CST) (on file with the *St. Mary's Law Journal*) (critiquing the Creed and stating the public would perceive the Creed as a signal of the profession’s descent to rock bottom).

84. See Interview with Jonathan E. Smaby, *supra* note 38 (addressing the Creed’s different provisions). Compare THE TEXAS LAWYER'S CREED—A MANDATE FOR PROFESSIONALISM, *supra* note 1, at 871 (“I will treat counsel, opposing parties, the Court, and members of the Court staff with courtesy and civility.”), with *id.* (“I will not arbitrarily schedule a deposition, court appearance, or hearing . . .”).

85. See Rhodes, *supra* note 80, at 236 (“[N]early half . . . the [Creed’s] standards relate to the duties that lawyers owe to opposing counsel.”).

The drafters recognized courts could enforce the Creed because of the inherent power doctrine, but reliance on inherent power to enforce the Creed was not its intended purpose.<sup>86</sup> Rather, the drafters stipulated a preference that the Creed be “enforced” or upheld by voluntary compliance built upon an understanding of the Creed and its principles and reinforced by public opinion and peer pressure from members of the legal community.<sup>87</sup>

Hecht noted the court was not sure if the Creed would work, but hoped the Creed’s direct and simple language would clearly communicate to lawyers and the public a desire to restore civility and professionalism to the legal profession.<sup>88</sup> Fred Hagans and David Keltner, two of the Creed’s drafters, mirrored this sentiment and furthered it by commenting on the success of the associations’ creed and the desire to build on that success.<sup>89</sup> Keltner also described the Creed functioning as a “long, hard, internal look because it was lawyers, as a profession, formally aspiring to be better.”<sup>90</sup> Despite any uncertainty, the drafters hoped the Creed—over time—would gain momentum and positively change the ethical landscape of the legal profession.<sup>91</sup>

## V. EVOLUTION OF THE CREED

### A. *The Creed’s Reception*

The Texas Lawyer’s Creed is one of the first to be formally adopted by a state supreme court.<sup>92</sup> The Creed received national recognition,<sup>93</sup>

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86. Interview with Nathan Hecht, *supra* note 8; Telephone Interview with David Keltner, *supra* note 53.

87. Telephone Interview with David Keltner, *supra* note 53; *see also* Letter from Eugene A. Cook to the Lawyers of Tex., *supra* note 67 (introducing Texas lawyers to the Creed and outlining its intended purposes).

88. Interview with Nathan Hecht, *supra* note 8.

89. Telephone Interview with Fred Hagans, *supra* note 10; Telephone Interview with David Keltner, *supra* note 53.

90. Telephone Interview with David Keltner, *supra* note 53.

91. *See* Smaby & Godbey, *supra* note 8, at 906 (stating no one knew how the Creed would impact the legal profession).

92. *See* McCorkle, *supra* note 56, at 1 (“It’s one of the first in the nation where the [s]upreme [c]ourt promulgated it.”); *see also* Cook et al., *supra* note 3, at 674–75 (claiming Texas is the first state to promulgate a state wide creed); Huffman, *supra* note 6, at 833 (recognizing at least 149 lawyer–professional codes, but stating the Creed as one of the first).

93. *See* Letter from Diana Corbin, Tex. State Bar, to Eugene A. Cook, Justice, Tex. Supreme Court (Mar. 5, 1990), <https://www.legalethictexas.com/Downloads/Texas-Lawyers-Creed/Letter-Commenting-on-Adoption-of-Creed---State-Bar.aspx> (capturing the enthusiasm and demand for the Creed).

inspiring judicial entities, bar associations, Texas law schools, and individual attorneys, and the court received recognition for its efforts.<sup>94</sup> Judges from Texas courts<sup>95</sup> and other state supreme courts complimented the Texas Supreme Court on the adoption of the Creed, and a few jurisdictions even expressed a desire to follow Texas's lead.<sup>96</sup> Approximately five months after the Texas Lawyer's Creed's adoption, over 85,000 copies of the Creed were mailed to or ordered by Texas State Bar members.<sup>97</sup> Also, every Texas law school received a copy of the Creed.<sup>98</sup> Deans of Texas law schools expressed their approval of the Creed, including some who requested additional copies for distribution to faculty members and students.<sup>99</sup> These reactions demonstrated strong

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94. See Tuma & Morgan, *supra* note 4, at 4 (announcing the promulgation of the Creed and congratulating the Court); see also *For the Record*, N.Y. TIMES, Dec. 1, 1989, at Y27 (suggesting the importance of the Creed by including an excerpt of the Creed); Letter from William L. Wilks, Dean, S. Tex. Coll. of Law, to Eugene A. Cook, Justice, Tex. Supreme Court (Jan. 8, 1990), <http://legalethicstexas.com/Downloads/Texas-Lawyers-Creed/Letter-Commenting-on-Adoption-of-Creed---South-TX.aspx> (commenting on his recent trip to the Association of American Law Schools convention in San Francisco where the Creed was frequently mentioned).

95. See Letter from George M. Thurmond, Judge, 63rd Dist. Court, Val Verde, Cty., Tex., to Eugene A. Cook, Justice, Tex. Supreme Court (Jan. 4, 1990), <https://www.legalethicstexas.com/Downloads/Texas-Lawyers-Creed/Letter-Commenting-on-Adoption-of-Creed.aspx> (writing in his role as a district judge to express appreciation for the Creed and to thank the court for sending him a copy).

96. See Letter from Jack Holt, Jr., Chief Justice, Ark. Supreme Court, to Eugene A. Cook, Justice, Tex. Supreme Court (Feb. 20, 1990), <https://www.legalethicstexas.com/Downloads/Texas-Lawyers-Creed/Letter-Commenting-on-Adoption-of-Creed---Chief-Jus.aspx> ("I compliment your Court . . . for taking formal steps to foster legal ethics and professionalism in the practice of law. Hopefully, we will follow."); Letter from Dorothy Comstock Riley, Chief Justice, Mich. Supreme Court, to Eugene A. Cook, Justice, Tex. Supreme Court (Feb. 27, 1990), [https://www.legalethicstexas.com/Downloads/Texas-Lawyers-Creed/Letter-Commenting-on-Adoption-of-Creed---Chief-\(1\).aspx](https://www.legalethicstexas.com/Downloads/Texas-Lawyers-Creed/Letter-Commenting-on-Adoption-of-Creed---Chief-(1).aspx) (relaying she circulated copies of the Creed and recognizing the Creed as signifying a proud moment for Texas).

97. See Letter from Diana Corbin to Eugene A. Cook, *supra* note 93 (stating the quantities of the Creed that were distributed).

98. See Letter from C. Paul Rogers III, Dean, S. Methodist Univ., to Eugene A. Cook, Justice, Tex. Supreme Court (Jan. 29, 1990), <https://www.legalethicstexas.com/Downloads/Texas-Lawyers-Creed/Letter-Commenting-on-Adoption-of-Creed---SMU-Law-S.aspx> (acknowledging receipt of copies of the Creed); Letter from William L. Wilks to Eugene A. Cook, *supra* note 94 (telling Cook the school received copies of the Creed); Letter from Mark G. Yudof, Dean, Univ. of Tex. at Austin, Sch. of Law, to Eugene A. Cook, Justice, Tex. Supreme Court (Jan. 2, 1989), <https://www.legalethicstexas.com/Downloads/Texas-Lawyers-Creed/Letter-Commenting-on-Adoption-of-Creed---UT-Law-Sc.aspx> (thanking the court for copies of the Creed).

99. See Letter from C. Paul Rogers III to Eugene A. Cook, *supra* note 98 (relaying how copies of the Creed were distributed to students); Letter from William L. Wilks to Eugene A. Cook, *supra* note 94 (notifying Cook of the Creed's distribution to students and faculty); Letter from Mark G. Yudof to Eugene A. Cook, *supra* note 98 (endorsing the Creed and requesting additional copies for the faculty).

support for the Creed, and it renewed hope in formerly discouraged lawyers and prompted some to return to the legal profession.<sup>100</sup>

B. *Opposition to the Creed*

Despite its overwhelming approval, the Creed has encountered some opposition. But the resistance was slight, as Hecht explained: “How could you oppose something on the level of motherhood or apple pie? Who could be against ethics?”<sup>101</sup> Some were concerned the Creed was just “patting attorneys on the head.”<sup>102</sup> Individuals opposing it raised four primary concerns: (1) “the Creed would adversely impact advocacy,”<sup>103</sup> (2) adoption by the state’s highest courts would misconstrue the Creed’s aspirational purpose because it could be perceived as new law,<sup>104</sup> (3) it would “implicitly cast additional aspersions on the profession,”<sup>105</sup> and (4) the Creed would distract from continuing legal education needs.<sup>106</sup> Proponents of the Creed acknowledged these concerns but were satisfied the Creed’s format and implementation would not implicate any of these concerns.<sup>107</sup>

The Committee and the court considered the aforementioned concerns during the drafting process.<sup>108</sup> For example, Fred Hagens wanted to avoid sterilizing advocacy and stifling creativity. As a result, he kept this concern at the forefront to ensure the Creed’s final draft would not hinder zealous advocacy.<sup>109</sup> Adding to this example, Chief Justice Hecht stated

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100. Telephone Interview with David Keltner, *supra* note 53; *see also* Letter from Stephen W. Dallagher to Eugene A. Cook, *supra* note 20 (considering a possible return to the practice of law).

101. Interview with Nathan Hecht, *supra* note 8; *see* Furgeson, *supra* note 80, at 1110 (noting the Creed’s universal themes of civility and professionalism and expressing his surprise that some opposed the Creed).

102. Telephone Interview with Fred Hagens, *supra* note 10.

103. *See* Email from John W. Bickel II, *supra* note 83 (voicing his initial concern regarding the Creed’s impact on advocacy); *see also* Brewer III & Majorie, *supra* note 16, at 849 (criticizing the Creed’s vague words as difficult to interpret and attributing this to the birth of timid, ineffective lawyers who are forced to second guess their every move); Hagens, *supra* note 12, at 4 (noting a concern about sterilizing the legal process).

104. Email from John W. Bickel II, *supra* note 83.

105. *Id.*

106. *See* Brewer III & Majorie, *supra* note 16, at 848 (promoting continuing legal education as the desired focus of the legal profession and stating the Creed diverts “attention from the real issues”); *see also* Brewer III & Bickel II, *supra* note 9, at 20 (arguing codes are useless and counterproductive).

107. *See* Sprouse, *supra* note 45, at 1107 (defending the Creed and addressing Bickel’s assertions regarding the Creed’s uselessness).

108. Interview with Nathan Hecht, *supra* note 8; *see also* Cook, *supra* note 15, at 1303 (explaining the Creed’s intended purpose and how it should be implemented).

109. *See* Telephone Interview with Fred Hagens, *supra* note 10 (restating the initial concerns

the court recognized the potential for the Creed to be misconstrued as law, so the promulgating order specifically stated the Creed was aspirational in nature.<sup>110</sup> The Creed's absence of explicit language allowing sanctions for lawyer misconduct suggests the court desired to avoid implementing new sanctions.<sup>111</sup>

Proponents and opponents of the Texas Lawyer's Creed generally expressed similar concerns regarding the adoption of a creed. But while proponents conclude the Creed does not impede the effectiveness of advocacy,<sup>112</sup> opponents think otherwise.<sup>113</sup> Opponents assert the Creed is plagued with vague conclusory language that potentially conflicts with pre-existing ethical codes and does not provide clear guidance for lawyers.<sup>114</sup> Opponents further argue the Creed constricts zealous advocacy.<sup>115</sup>

John W. Bickel II, one prominent opponent of the Creed, does not defend attorneys who equate "being a jerk" with zealous advocacy, but rather faults the Creed for causing confusion in the procedural realm of advocacy.<sup>116</sup> As Bickel explained, a conundrum for a young lawyer arises when opposing counsel fails to timely answer requests for admission.<sup>117</sup> The young lawyer systematically moves for summary judgment.<sup>118</sup>

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considered during the Creed's drafting and concluding the Creed successfully avoided the potential downfalls); *see also* Hagans et al., *supra* note 57, at 834 (citing Hagan's recollection of concern among members of the bar that the Creed would sterilize litigation).

110. Interview with Nathan Hecht, *supra* note 8; *see also* THE TEXAS LAWYER'S CREED—A MANDATE FOR PROFESSIONALISM, *supra* note 1, at 869 (illustrating the Creed's desire for lawyers "to attain the highest degree of ethical and professional conduct"); Enoch, *supra* note 2, at 221 (discussing the aspirational nature of the Creed).

111. *See* THE TEXAS LAWYER'S CREED—A MANDATE FOR PROFESSIONALISM, *supra* note 1, at 869 (noting compliance with the Creed is voluntary, and a court can enforce the Creed "through their inherent powers and rules already in existence").

112. *See* Furgeson, *supra* note 80, at 1112–13 (defending the Creed's success and dispelling arguments posed by those opposing the Creed).

113. Email from John W. Bickel II, *supra* note 83 (backing the concern that the Creed would adversely influence advocacy).

114. *See id.* ("An aspirational code of conduct should not have been applied to buttress otherwise weak sanction rulings. But they were."); *see also* Smith, *supra* note 4, at 173 (urging a revision of civility codes partially because of their vague wording).

115. *See* Email from John W. Bickel II, *supra* note 83 (insinuating the Creed wasn't always interpreted as being so black and white).

116. *See id.* (voicing three-fold concerns and criticisms: (1) the Creed would unfavorably impact advocacy, (2) the Creed served as simple reminder rather than created an enforceable new legal standard, and (3) it unintentionally relayed to the non-legal community that the legal profession had "hit [rock] bottom" and was in need of a code of conduct).

117. *See id.* (illustrating the tug-of-war as to what actions constitute a Creed violation).

118. *See id.* (recognizing the standard response to an adversary's failure to file timely responses to requests for admission was to move for summary judgment).

Opposing counsel's failure to timely answer the requests for admission "shall be deemed admitted" when applying the standard of the 1980s and 1990s.<sup>119</sup> However, what course of action should this young lawyer take when opposing counsel requests dismissal of the summary judgment motion because the requests were actually answered?<sup>120</sup> Does declining the request result in a Creed violation because the Creed directs this lawyer to act civilly?<sup>121</sup> The Texas Disciplinary Rules of Professional Conduct (Rules) demand lawyers act in the best interests of the client, so how does the lawyer resolve these conflicting directives?<sup>122</sup> Some interpretations consider denying opposing counsel as uncivil and could mar the young lawyer's reputation.<sup>123</sup> Consequently, Bickel states the young lawyer is left in a confused state.<sup>124</sup>

Debate about competing forces of zealous advocacy and ethical codes has always existed within the adversarial nature of the judicial system.<sup>125</sup> The Creed inherently addressed this tension by imposing a mandatory obligation to abide by the Rules and subsequently stating a commitment to the Creed "for no other reason than it is right."<sup>126</sup> This statement is premised on the understanding that the Rules demand a minimal standard of behavior, and the Creed calls for a higher aspirational level of

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119. *Id.*

120. *See id.* (referring to the illustration where opposing counsel states requests for admissions were only "a few days late," thus summary judgment should not be granted).

121. *See id.* (opining the failure to dismiss a motion for summary judgment would be construed as "uncivil" by the court).

122. *See id.* (emphasizing the request for admissions deemed "admitted" would result in a positive outcome in a motion for summary judgment, thus agreeing to dismiss would not be favorable to the client).

123. *See id.* (declaring that following such a typical summary judgment standard could lead to the destruction of a green lawyer's reputation).

124. *See id.* (referring to the conflict young lawyers face when zealously advocating for their client and adhering to the Creed's instructions regarding civility in the courtroom). *But see* Sprouse, *supra* note 45, at 1107 (rejecting the example of a young confused lawyer unable to decipher a directive).

125. *See* Smaby & Frels, *supra* note 4, at 838 (opining there has always been a conflict in the law between advocacy and ethics); Interview with Jonathan E. Smaby, *supra* note 38 (explaining the situation in the 1980s and asserting "[t]he tension between zealous advocacy and a need for civility has always been present"); *see also* Enoch, *supra* note 2, at 201 (noting an attorney's first duty is to his or her client, which is limited by their duties to the court; however, these limits have expanded to "force counsel to permit discovery where objecting is baseless").

126. *See* THE TEXAS LAWYER'S CREED—A MANDATE FOR PROFESSIONALISM, *supra* note 1, at 869–71 (referencing the Texas Disciplinary Rules of Conduct and a commitment to the Creed); *see also* Cook et al., *supra* note 3, at 677 (including the section of the Creed that references the Rules and the Creed); Sprouse, *supra* note 45, at 1107 (pointing to the Creed's language, "all appropriate legal means to protect and advance the client's legitimate objectives and interests" and concluding the Creed does not contradict the Rules).

conduct.<sup>127</sup> The inherent tension between the mandatory Rules and the aspirational Creed arises from the potential overlap of the abstract nature of the Creed and the specificity of the Rules.<sup>128</sup> Some scholars resolve this tension by accepting a broader definition of civility based on a compilation of the Creed and the Rules,<sup>129</sup> while other scholars assert the zealous advocacy and civility demanded by ethical codes are compatible.<sup>130</sup> The practice of law demands that a lawyer comprehend how the law applies to practicing lawyers and how to practice civility.<sup>131</sup>

Judge Royal Furgeson adamantly asserts this debate is misplaced for several reasons; one reason is the debate focuses on an adversarial system

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127. See Hunter, *supra* note 9, at 1104 (interpreting the Lawyer's Creed as a directive to "do unto others as you would have them do unto you"); Rhodes, *supra* note 80, at 236 (approving of the Creed's call to a higher standard than the Rules); Sprouse, *supra* note 45, at 1107 (writing the preamble to the Texas Disciplinary Rules of Professional Conduct instructs lawyers to "rise above the disciplinary standards prescribed by [the] Rules").

128. See Campbell, *supra* note 49, at 143 (describing the tension between civility creeds and ethical codes and noting the overlap); Smith, *supra* note 4, at 161 (asserting a comparison of civility codes and the Rules results in a "substantive overlap"). *But see* Sprouse, *supra* note 45, at 1107–08 (arguing the Rules do not conflict with the Creed and comparing them to illustrate how they act in harmony with one another).

129. See Alvarado, *supra* note 67, at 1069 (acknowledging the tension between codes and aspirational goals and instructing lawyers to view them together as a way to resolve the tension); Biery, *supra* note 9, at 1116 (dispelling the temptation to believe the Rules are complex and asking lawyers to focus on the underlying principle that they simply must treat each other as they expect to be treated). *But see* Brewer III & Bickel II, *supra* note 9, at 20 (rejecting the broader duty to the judicial system explanation because it only confuses lawyers and leaves them in an imbroglio); Kalish, *supra* note 40, at 664–75 (rejecting the Restatement's attempt to merge the minimal requirements with aspirational goals).

130. See Furgeson, *supra* note 80, at 1111 (dismissing opposition to the Creed and firmly asserting the Creed does not distract from zealous advocacy); Broadus A. Spivey, *Ethics: Lawyering and Professionalism*, 33 ST. MARY'S L.J. 722, 736 (2001) (addressing the Creed's promotion of civility and courtesy focused on increasing "efficiency of the justice system without compromising the duties a lawyer owes a client"); Sprouse, *supra* note 45, at 1107 (recalling times when Sprouse personally violated the Creed, urging these violations were not necessary to advance his client's needs and advancing the idea that civility and advocacy are not competing forces); David A. Grenardo, *Enforcing Civility: Holding Attorneys to a Higher Standard 6–7* (May 30, 2013) (unpublished manuscript) (on file with the *St. Mary's Law Journal*) (supporting the enforcement of civility and asserting the compatibility of zealous advocacy and professional rules because civility has the ability to enhance zealous advocacy).

131. See Alvarado, *supra* note 67, at 1070 (advocating a two-prong requirement that lawyers should study the law and practice professionalism, since these duties are complimentary to one another); *see also* Campbell, *supra* note 49, at 144 (asserting courts and lawyers know the distinctions between civility and professional duty); Enoch, *supra* note 2, at 221 (stating compliance with the Creed starts by devoting time to understand the Creed, followed by voluntarily ascribing to its standards); *cf.* Grenardo, *supra* note 130, at 6 (advancing civility rules despite the required level of subjectivity and proposing methods for addressing subjectivity).

and fails to consider the civil justice system.<sup>132</sup> He further explains that a majority of litigation (more than 90%) takes place outside of the courtroom and in a more collaborative setting where the procedural processes that allegedly collide with the Creed are irrelevant.<sup>133</sup> The Creed provides an avenue for understanding the level of civility the profession aspires to achieve and incorporating this level of civility is beneficial to the lawyer.<sup>134</sup>

#### VI. THE CREED'S INCORPORATION IN THE LEGAL PROFESSION

The inherent power doctrine enables courts to enforce the Creed.<sup>135</sup> Courts have acknowledged the Creed's purpose as an attempt to combat abusive tactics and have cited it for additional support in some of their opinions.<sup>136</sup> Since its adoption, the Creed has been mentioned in more than fifty cases and in one Texas Attorney General opinion.<sup>137</sup> Additionally, at least two courts outside of Texas have cited the Creed.<sup>138</sup> Although one case involved an attorney who attempted to use the Creed in a manner clearly prohibited by the court's order,<sup>139</sup> most citations call

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132. See Furgeson, *supra* note 80, at 1110–12 (recognizing more than one method for resolving legal disputes and emphasizing no one method should be preferred over another).

133. See *id.* (noting the courtroom is not the only means to resolve a dispute; rather, a client is better served if her lawyer works towards compromise as opposed to trial).

134. Telephone Interview with Jay Madrid, *supra* note 19; see Whitehurst, *supra* note 47, at 1100 (illustrating ways the Creed enables a lawyer to be more profitable).

135. See Whitehurst, *supra* note 47, at 1100 (commenting on the inherent power of the courts to enforce the Creed); cf. Aaron Bayer, *Tougher Measures for a Continued Lack of Civility*, NAT'L. L. J., Oct. 27, 2014, <http://www.nationallawjournal.com/id=1202674529680/Tougher-Measures-for-a-Continued-Lack-of-CivilityContinued> (discussing various creeds and describing the use of the inherent power doctrine to add “teeth” to civility codes).

136. See Moliterno, *supra* note 5, at 797 (noting the Texas Lawyer's Creed is the most cited in case law); Smith, *supra* note 4, at 167–71 (bemoaning Texas state courts and federal courts citations to the Creed as a basis for disciplinary action); see also *Resolution Tr. Corp. v. Tarrant Cty. Appraisal Dist.*, 926 S.W.2d 797, 802 n.4 (Tex. App.—Fort Worth 1996, no writ) (“At a minimum, the . . . conduct falls within the broad range of ‘abusive tactics,’ which the Supreme Court of Texas sought to eliminate through its promulgation and adoption of ‘The Texas Lawyer's Creed—A Mandate for Professionalism.’”).

137. See Op. Tex. Att'y Gen. ORD1990-0579 (listing cases mentioning or citing the Creed).

138. See *Edberg v. Neogen Corp.*, 17 F. Supp. 2d 104, 109–10 (D. Conn. 1998) (quoting the Creed from William S. Sessions's article on professional obligations); see also *Carnival Corp. v. Beverly*, 744 So.2d 489, 497 (Fla. Dist. Ct. App. 1999) (noting cases where attorneys were sanctioned for failing to follow civility rules).

139. See *Braden v. S. Main Bank*, 837 S.W.2d 733, 737 (Tex. App.—Houston [14th Dist.] 1992, writ denied) (stating the attorney's use of the Creed distorted its intended purpose).

upon the Creed as additional reinforcement for preexisting rules.<sup>140</sup>

The Creed has served as a model for other jurisdictions.<sup>141</sup> Currently, thirty-four states have a similar creed.<sup>142</sup> Some entities have even adopted language that is very similar to the Creed.<sup>143</sup> In 1990, the U.S. District Court for the Southern District of Texas adopted the Creed.<sup>144</sup> Four years later, federal judges recognized the importance of the Texas Lawyer's Creed and signed a proclamation that it should be upheld in all Texas federal courts.<sup>145</sup> In 1995, the U.S. District Court for the Western District of Texas separately adopted the Creed, "commend[ing] it for observance to all lawyers practicing in this District," but the court expressly stated "the Creed is aspirational and any failure to follow it cannot be the basis for any sanction or other remedy."<sup>146</sup>

The Creed is useful to admonish lawyers. Previously, there was a lot of finger pointing, and from a judge's perspective, it may have been difficult to find the source to directly confront lawyer misconduct.<sup>147</sup> The Creed provided a tangible method for guiding lawyers' behavior and enabled the public to understand how lawyers should interact with one other.

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140. See HERRING, JR., *supra* note 3, at 684–85 (examining the role of the Creed and its interaction with the Texas Rules of Civil Procedure and demonstrating how the Creed is generally used as additional support for reinforcement of "rules already in existence").

141. See Cook et al., *supra* note 3, at 693 (finding Texas to be a role model because other states have adopted similar creeds); DeGraw & Burton, *supra* note 25, at 371 (recognizing a trend among the states because "by 1993, at least forty states had also adopted some version of a 'lawyer's creed'"); Smaby & Godbey, *supra* note 8, at 905 (noting attorneys within Texas and across the nation have shifted their focus to gain a better balance between civility and advocacy as a result of the Creed).

142. See Smith, *supra* note 4, at 159 (asserting the Creed was the first civility code and noting "as many as thirty-six state bar associations and supreme courts and sixty-nine local bar associations have adopted similar creeds or codes").

143. See Campbell, *supra* note 49, at 116 (identifying similar language in several states codes); Cook et al., *supra* note 3, at 675 (commenting on other states pursuing creeds with similar language); *A Lawyer's Creed*, MORTON LAW FIRM, <http://www.mortonlawfirm.com/Resources.html> (last visited Jan. 4, 2016) (providing an example of a law firm that has adopted the Creed as its operational philosophy).

144. Furgeson, *supra* note 80, at 1113–14 (recommending federal courts endorse the Creed and stating the Southern District has already adopted it); see *Exxon Chem. Patents, Inc. v. Lubrizol Corp.*, 131 F.R.D. 668, 674 (S.D. Tex. 1990) ("Counsel are admonished that their failure to comply with the Texas Lawyer's Creed . . . adopted by this Court *will* result in monetary sanctions being imposed against counsel individually.").

145. See HERRING, JR., *supra* note 3, at 675 ("On November 9, 1994, the four chief judges of the [f]ederal districts in Texas signed a proclamation 'commending' to all lawyers practicing in [f]ederal [c]ourts in Texas a 'thorough study' of the Texas Lawyer's Creed.").

146. Interview with Charles Herring, Jr., *supra* note 8.

147. Interview with Nathan Hecht, *supra* note 8.

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## VII. CURRENT PERCEPTION: A SURVEY OF PROMINENT INDIVIDUALS

This section compiles commentary from interviews with the following individuals: John W. Bickel II,<sup>148</sup> Kelly Frels,<sup>149</sup> Beverly Godbey,<sup>150</sup> Fred Hagans,<sup>151</sup> Chief Justice Nathan Hecht,<sup>152</sup> Charles Herring, Jr.,<sup>153</sup> David Keltner,<sup>154</sup> Jay Madrid,<sup>155</sup> Judge Larry Noll,<sup>156</sup> and Jonathan E. Smaby.<sup>157</sup> Their collective insight provides an overview of how the Creed is currently viewed and its overall effectiveness.

### A. *Summarizing the Creed's Impact on Abusive Advocacy and Incivility*

All persons interviewed unanimously agreed, without hesitation, that since the implementation of the Creed, general awareness of how lawyers should treat each other has increased. Most concluded the integrity of the profession has improved because lawyers strive to reflect the ideals embodied by the Creed. Beverly Godbey summarized this conclusion:

Lawyers have made an effort to be more professional, civil, accommodating, and considerate after the Creed was adopted. There will always be outliers, but the Creed has motivated lawyers all across Texas to take affirmative steps to lead by example, educate young lawyers[,] and speak out against

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148. John W. Bickel II has practiced law for over thirty years. He has published a few articles commenting on the Creed. Mr. Bickel practiced in Dallas during the promulgation of the Creed.

149. Kelly Frels was practicing law in Houston during the Creed's promulgation and is closely associated with Committee members of the Texas Supreme Court Advisory Committee on Professionalism. He is Senior Counsel at Bracewell & Guiliani LLP.

150. Beverly Godbey, a former chair of the State Bar of Texas Board of Directors, is a partner with Gardere Wynne Sewell LLP in Dallas and a trustee of the Texas Center for Legal Ethics.

151. Fred Hagans co-chaired the subcommittee of the Texas Supreme Court Advisory Committee on Professionalism tasked with drafting the Creed. He is a partner at Hagans, Burdine, Montgomery & Rustay, PC.

152. Chief Justice Nathan Hecht was elected to the Texas Supreme Court in 1988. He was one of the Justices who signed the order for the Creed, and he currently serves as Chief Justice of the Texas Supreme Court.

153. Charles Herring, Jr. has been practicing law for over thirty-nine years. He is the author of the legal treatise, *Texas Legal Malpractice & Lawyer Discipline*. He has served on various Texas Supreme Court committees, including as Chair of the Texas Supreme Court's Task Force on Sanctions. Mr. Herring, Jr. is a partner at Herring & Irwin, LLP.

154. David Keltner was a member of the Texas Supreme Court Advisory Committee on Professionalism that drafted the Texas Lawyer's Creed. He is a partner at Kelly Hart.

155. Jay Madrid has practiced law for over forty years. He practiced in Dallas, the former hub for Rambo litigators, and he has closely observed the transformation of the legal profession. Mr. Madrid is a shareholder at Winstead PC.

156. Judge Larry Noll is the judge of the 408th District Court, Bexar County, Texas. He served as a lawyer-member of the original drafting Committee for the Texas Lawyer's Creed.

157. Jonathan Smaby is the Executive Director at the Texas Center for Legal Ethics. He has closely studied the Creed and has published several articles related to the Creed.

unprofessional conduct if and when it is observed.<sup>158</sup>

Kelly Frels also referenced the outliers and attributed some of their behavior to a desire to pacify clients: “[O]ver aggressiveness by some lawyers [is often] client generated . . . [Those] lawyers are afraid to lose clients in an era when there are so many lawyers in the marketplace who will jump at the chance to get a new client.”<sup>159</sup> Judge Larry Noll credits the Creed as successfully improving civility, but expresses some reservations:

[I] unfortunately [observe] remnants of “Ramboism” . . . in the practice of Family Law in and out of the courtroom on a regular basis. . . . [T]he practice of [F]amily [L]aw creates these Rambo opportunities because family lawyers have a habit of adopting the persona of their clients in pursuing their clients’ claims.<sup>160</sup>

John W. Bickel II agrees with the general summation of current affairs; however, he does not credit the Creed for the noticeable improvement.<sup>161</sup> He credits other changes, such as revisions to state rules governing discovery procedures, for the “attitudinal change of litigators.”<sup>162</sup> Nonetheless, Bickel acknowledges “the mere publication of the Creed did make it clear to judges that they are not to tolerate much horseplay during depositions.”<sup>163</sup>

#### B. *Exploring Practical Applications of the Creed*

The interviews revealed common themes—almost all use the Creed within their practice and primarily for the purpose of educating clients, for apprising opposing counsels of their intent to abide by the Creed, and for setting parameters for expected behavior. The Creed is typically included in client engagement letters,<sup>164</sup> posted on firms’ websites, and sent to opposing counsel under various circumstances. For example, Frels mailed the Creed, along with citations to dispositive law, to a young lawyer who

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158. Email from Beverly Godbey, Partner, Gardere Wynne Sewell LLP, to author (Nov. 19, 2014, 17:12 CST) (on file with the *St. Mary's Law Journal*).

159. Email from Kelly Frels, *supra* note 17.

160. Email from Larry Noll, *supra* note 2.

161. See Email from John W. Bickel II, *supra* note 83 (stating, “I don’t think the publication of the Creed had much to do with the difference[]” in lawyers’ behavior towards one another, although admitting the Creed had some marginal effects).

162. *Id.*

163. *Id.*

164. See HERRING, JR., *supra* note 3, at 677 (asserting law firms should mail the Creed along with engagement letters).

initiated an aggressive and frivolous lawsuit against a school district that was fully protected by sovereign immunity.<sup>165</sup> The lawyer replied by thanking Frels for his civil approach and for helping him avoid sanctions for knowingly filing a meritless lawsuit.<sup>166</sup>

Jay Madrid provides another example. He always sends the Creed at the beginning stage of any conversation with opposing counsel for several reasons: (1) it proactively establishes an understanding and expectation for how the conversation will proceed instead of waiting for a problem to arise; (2) it directs opposing counsel to cite the Creed if Madrid deviates from ethical behavior; and (3) it typically ensures the litigation is focused on the merits and saves his clients time and money.<sup>167</sup> Keltner and Hagans also include a copy of the Creed in their client engagement letters.<sup>168</sup>

Bickel commented on these examples: “[P]erhaps such was done and it ‘worked[,]’ [but I] prefer [using] other available, more effective tools . . . to assist in winning the jury verdict.”<sup>169</sup> These tools serve a dual purpose because they correct unethical lawyer behavior and assist in winning jury trials.<sup>170</sup> Bickel provides the following hypothetical: a lawyer involved in a multi-million dollar case faces many stressors, but this lawyer must be able to overcome these tensions and not let the stress of an important case impact his treatment of opposing counsel.<sup>171</sup> “If counsel gets sufficiently out of hand, the rules provide for remedies.”<sup>172</sup> Furthermore, bigger cases typically involve a jury question on attorneys’ fees.<sup>173</sup> This provides an opportunity for an opponent to inform the jury of a lawyer’s inappropriate conduct (pertinent because the unethical behavior increases attorneys’ fees), and often this is more impactful on the result than a monetary sanction by a judge.<sup>174</sup>

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165. See Email from Kelly Frels, *supra* note 17 (explaining how Frels incorporates the Creed in his daily practice).

166. See *id.* (noting the grateful reaction of a lawyer who received a copy of the Creed to identify and prevent him from committing an ethical violation).

167. Telephone Interview with Jay Madrid, *supra* note 19.

168. Telephone Interview with Fred Hagans, *supra* note 10; Telephone Interview with David Keltner, *supra* note 53.

169. Email from John W. Bickel II, Of Counsel, Fish & Richardson PC, to author (Nov. 11, 2014, 18:42 CST) (on file with the *St. Mary's Law Journal*); accord Smith, *supra* note 4, at 171–85 (finding fault with civility codes and proposing alternative methods for instilling civility).

170. Email from John W. Bickel II *supra* note 169.

171. *Id.*

172. *Id.*

173. *Id.*

174. *Id.*

Bickel further explains how, during trial, opposing counsel often plays the role of “an agreeable choir boy.”<sup>175</sup> When introducing testimony on attorneys’ fees, counsel establishes, through the testimony of an expert, how much the cost to prosecute the matter has been increased by the misconduct of opposing counsel. “When counsel plays the video of opposing counsel’s behavior outside the presence of the jury, the contrast is palpable, if not dramatic. The finder of fact feels as if they have been had.”<sup>176</sup> Bickel believes the impact of this video testimony and evidence on the offending party is often much greater than any judge-imposed sanction.<sup>177</sup> A motion for sanctions often stops the offensive conduct that Bickel typically wants to continue, so his demonstrative evidence is more dramatic.<sup>178</sup> He adds, trial counsel can also use the video clips in mediation to assist with resolving the matter prior to trial.<sup>179</sup>

It is undisputed that other avenues for addressing misbehavior are available. Nevertheless, the Creed does not replace or uproot these avenues.<sup>180</sup> Rather, it is best to view the Creed as an additional tool capable of shaping ethical behavior. Jonathan E. Smaby describes the Creed as “an effective, under-utilized, powerful tool. It is also inexpensive to engage—merely just the cost of printing.”<sup>181</sup> While some may argue it is unnecessary, the Creed has served a purpose and should continue to inspire lawyers to not only uphold fundamental ethical mandates, but also to strive for an aspirational level of conduct that benefits the client, the lawyer, and the profession.

### C. *Assessing Whether the Creed Should Remain Aspirational*

Although the Creed can be enforced by the inherent power doctrine,<sup>182</sup> the Creed’s purpose is solely aspirational. Frels states the aspirational nature of the Creed limits the use of sanctions.<sup>183</sup> All interviewed agreed the Creed should not be used as the basis for sanctions.<sup>184</sup> Hecht firmly

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175. *Id.*

176. *Id.*

177. Email from John W. Bickel II, Of Counsel, Fish & Richardson PC, to author (Mar. 24, 2015, 12:15 CDI) (on file with the *St. Mary's Law Journal*).

178. *Id.*

179. *Id.*

180. See Cook et al., *supra* note 3, at 691 (emphatically proclaiming the influx of creeds is not a disservice).

181. Interview with Jonathan E. Smaby, *supra* note 38.

182. See Headley, *supra* note 23, at 135 (evaluating the inherent power of state courts to sanction).

183. Email from Kelly Frels, *supra* note 17.

184. See Grenardo, *supra* note 80, at 10 (concluding sanctions for attorney conduct is not

reiterates the use of the Creed as a basis for sanctions is contrary its purpose.<sup>185</sup> Godbey discredits sanctions that primarily rely on the Creed because rules already in place provide for sanctioning misconduct.<sup>186</sup> Moreover, he claims utilizing the Creed for sanctions reflects poorly on the profession because it is the equivalent of “hammer[ing] lawyers over the head with the Creed to make them comply.”<sup>187</sup>

Keltner reiterates one of the Creed’s intended purposes by stating the Creed should function on the “level of a written reminder from a mentor to a mentee, addressing the aspirational goals of the profession.”<sup>188</sup> Still, the aspirational nature should not limit the courts’ use of its principles to guide and direct lawyers on proper behavior.<sup>189</sup> Adhering to the mentoring perspective, Hagan, Hecht, Herring, Keltner, and Madrid recall examples of judges using the Creed to remind lawyers of appropriate behavior. These examples reveal a reliance on the Creed to guide lawyers, not to sanction them. For example, Madrid recounts a time when a judge directed both parties to take a recess, read the Creed, reflect on the Creed’s directive, and then return to court.<sup>190</sup> He also notes some judges highlight the Creed by displaying it in their courtroom.<sup>191</sup> These examples exhibit a few preferred avenues for implementing the Creed. Even if a few courts have used the Creed for sanctioning, this is arguably not a trend to pursue, because it contradicts the Creed’s purpose and ignores Rules already in place that permit sanctioning.<sup>192</sup>

#### VIII. LOOKING TO THE FUTURE: ANALYZING THE CREED’S RELEVANCE

Periodically, the Creed’s structure is revisited to ensure its longevity.<sup>193</sup>

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favored in Texas).

185. Interview with Nathan Hecht, *supra* note 8.

186. Email from Beverly Godbey, *supra* note 158.

187. *Id.*

188. Telephone Interview with David Keltner, *supra* note 53.

189. Email from Kelly Frels, *supra* note 17.

190. Telephone Interview with Jay Madrid, *supra* note 19.

191. *Id.*

192. See Moliterno, *supra* note 5, at 796–97 (advancing reasons why creeds should not be enforced).

193. See Ahlenius, *supra* note 44, at 1092 (discussing how, around the Creed’s fifth anniversary, a committee was tasked with “reviewing the Texas Lawyer’s Creed and suggesting to the high courts revisions or additions to facilitate the attainment of the aspirations of the current version of the creed”); Jim Branton, *Image and Professionalism*, 57 TEX. B.J. 594, 594 (1994) (describing how Branton served as state bar president and appointed a committee reviewing the efficiency of the Creed); Sproue, *supra* note 45, at 1107 (explaining Sproue’s role as Chairman of the Lawyer’s Creed Committee formed around the Creed’s fifth anniversary); see also Furgeson, *supra* note 80, at 1112 (proposing the legal profession is not static, thus the Creed should be revisited periodically).

The Texas Supreme Court and Texas Court of Criminal Appeals recently reaffirmed the Creed,<sup>194</sup> and the Counsel of Chief Justices showed support for the Creed by adopting a resolution to uphold it.<sup>195</sup> The Creed, as with any document, does not derive its strength solely from the words within the document.<sup>196</sup> It depends on members of the legal community to strengthen its ability to impact the legal profession.<sup>197</sup> While its words are strong, its true strength is found in the lawyers who acknowledge and uphold all the Creed seeks to promote.<sup>198</sup>

Unfortunately, there remains a wide gap between lawyers who fall into one of two groups: either they can quote portions of the Creed or they have never heard of it.<sup>199</sup> This gap is not a recent development, and prior efforts have been made to close it.<sup>200</sup> For example, the Texas State Bar campaigned to distribute the Creed for display throughout all Texas courts.<sup>201</sup> The legal profession must continually reemphasize the Creed<sup>202</sup> and should not abandon such efforts simply because the legal profession is constantly changing.<sup>203</sup> The number of lawyers licensed in

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194. See Smaby & Godbey, *supra* note 8, at 907 (“In fact, the creed is such an integral part of our profession that the Texas Supreme Court and the Texas Court of Criminal Appeals . . . reaffirmed it in April 2013.”); Teri Rodriguez, *The Texas Lawyer’s Creed*, TEX. BAR BLOG (Oct. 17, 2013, 9:52 AM), <http://blog.texasbar.com/2013/10/articles/state-bar/the-texas-lawyers-creed> (“[T]hen[,] State Bar of Texas President[,] Buck Files[,] worked with both the Texas Supreme Court and the Texas Court of Criminal Appeals to reaffirm the Creed and what it stands for.”).

195. *News From Around the Bar*, 77 TEX. B.J. 294, 294 (2014).

196. See Branton, *supra* note 193, at 594 (referring to the Creed and stating, “Our ‘image’ will not improve on the basis of the cleverness of our words, but on the quality of our actions”).

197. See Stone et al., *supra* note 3, at 133 (concluding if all lawyers commit to uphold the Creed then incivility would cease).

198. See Hagans et al., *supra* note 57, at 837 (embracing the Creed as a symbol of legacy while calling on lawyers to rededicate themselves to the Creed’s principles); see also William B. Hilgers, *The Path of Professionalism*, 57 TEX. B.J. 1088, 1088 (1994) (instructing lawyers to uphold the Creed).

199. See Michael J. Crowley, *A Defense Lawyer’s Perspective*, 57 TEX. B.J. 1096, 1096 (1994) (“Other than those lawyers involved in the drafting and promulgation of the creed . . . not many Texas lawyers can quote chapter and verse of the document.”); see also Furgeson, *supra* note 80, at 1113 (citing one of the problems with the Creed is most “lawyers seem to know nothing about it or even about its very existence”).

200. See Smaby & Godbey, *supra* note 8, at 906 (emphasizing programs offered by the Texas Center for Legal Ethics that incorporate the Creed and ethical education); Interview with Jonathan E. Smaby, *supra* note 38 (reviewing historical approaches to promoting the Creed).

201. Interview with Jonathan E. Smaby, *supra* note 38; see also Buck Files, *A Call for Renewed Civility*, 76 TEX. B.J. 401, 401 (2013) (outlining a plan to place the Creed in Texas courts, lawyers’ offices, and law schools).

202. See Files, *supra* note 201, at 401 (“As I have visited with judges in cities all over Texas, I have heard a common theme: we need to reemphasize the Lawyer’s Creed.”); Huffman, *supra* note 6, at 833 (urging the profession to use and cite the Creed); Whitehurst, *supra* note 47, at 1099–1100 (providing examples of how lawyers can use the Creed and advising lawyers to uphold the Creed).

203. Interview with Jonathan E. Smaby, *supra* note 38; see also Hilgers, *supra* note 198, at 1088

Texas is steadily increasing.<sup>204</sup> As new lawyers enter the profession, the Creed can serve as a guiding tool to continue to shape the ethical landscape of the profession.<sup>205</sup> The Creed should be incorporated and highlighted as a way to focus the profession on the ideals, goals, and values lawyers should strive to portray. Clearly, the Creed should not be single-handedly cited as law. Rather, it may be cited as additional support because judicial pressure may serve as another way to encourage lawyers to adhere to the Creed's principles.<sup>206</sup>

The profession has a responsibility to improve the public's perception, to uphold the integrity of the profession, and to effectively advocate for clients.<sup>207</sup> The Creed directs more than a mere adherence to the minimum: "[I]t focuses what should be done not what must be done."<sup>208</sup> The Creed should be championed by the profession.<sup>209</sup> "We do not automatically become professionals after we graduate from law school or read the [C]reed. More effort is required. In our daily practice, we must behave in a manner that is consistent with the established standards set forth in the creed."<sup>210</sup> It is up to lawyers to breathe life into the Creed.<sup>211</sup>

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("We never 'have it made.' It is a complex and changing scene with new players and circumstances every day.")

204. See Smaby & Frels, *supra* note 4, at 838–39 (analyzing the substantial increase of lawyers in Texas and its impact on ethics); State Bar of Tex., 2013–2014 ANNUAL REP., at 11, <http://www.texasbar.com/Content/NavigationMenu/NewsandPublications/AnnualReport/AnnualReport.pdf> (reporting a 30% increase in the number of Texas attorneys from 2004 to 2014).

205. See Roland Johnson, *Lawyer Is as Lawyer Does*, 72 TEX. B.J. 816, 816 (2009) (championing the Creed as a tool to unify and promote better ethics in a constantly changing profession).

206. See Huffman, *supra* note 6, at 833 (describing the dangers of judicial silence).

207. See Ahlenius, *supra* note 44, at 1092 ("[W]e must rededicate ourselves to practice law so we can restore public confidence in our profession, faithfully serve our clients, and fulfill our responsibility to the legal system."); Cook et al., *supra* note 3, at 693 (stating a continued commitment to the Creed's principles is needed to restore and maintain civility); Stone et al., *supra* note 3, at 132 (advising lawyers to read the Creed and dedicate themselves to uphold its dictates).

208. See Interview with Jonathan E. Smaby, *supra* note 38 (commenting how the Creed goes above the minimum barriers set by the Texas Disciplinary Rules); see also Ahlenius, *supra* note 44, at 1092 ("Professionalism requires more than merely avoiding violations of laws and rules."); Rhodes, *supra* note 80, at 236 (explaining the Creed calls all Texas lawyers to a standard that exceeds the disciplinary Rules). But see Smaby & Godbey, *supra* note 8, at 905 (contrasting the aspirational nature of the Creed to the Texas Disciplinary Rules of Professional Conduct).

209. See Crowley, *supra* note 199, at 1096 (crediting the Creed's success to the profession's commitment to the Creed because it is not enforced by sanctions); Files, *supra* note 201, at 401 (revisiting his campaign to publicize the Creed and asking: "Will all of this really make a difference in the way that law is practice in Texas? That's your decision"); Hunter, *supra* note 9, at 1104 (ordering lawyers to adhere to the Creed because it is essential to improving ethics and professionalism).

210. Rhodes, *supra* note 80, at 236; see Hagans et al., *supra* note 57, at 835 (quoting James H. "Blackie" Holmes III who called on the legal profession "to read, abide by, and communicate" the guidelines set by the Creed).

The profession should incorporate the Creed into seminars and conferences.<sup>212</sup> Law schools should consider introducing the Creed as part of their professional responsibility coursework.<sup>213</sup> Judges can also contribute by integrating the Creed in their courtrooms.<sup>214</sup> Notably, the benefits of ethical behavior also include long-term economic benefits because reputation earns business.<sup>215</sup>

Lawyers aspire to high ethical standards,<sup>216</sup> yet problems arise as they struggle to define what it means to be a “good lawyer.” Several factors have improved the ethical landscape—including the formation of the American Inns of Court,<sup>217</sup> discovery rule changes,<sup>218</sup> and the Texas

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211. See Spivey, *supra* note 130, at 737 (“It is up to all lawyers to breathe life into that mandate for professionalism, the Texas Lawyer’s Creed, and to prevent the legal profession’s further decline in the public eye.”); see also Branton, *supra* note 193, at 594 (calling on lawyers, “members of a privileged profession,” to improve the public’s perception of the legal profession); Whitehurst, *supra* note 47, at 1100 (recognizing the Creed’s call to lawyers to dedicate themselves to restoring public confidence and integrity of the profession).

212. See Lindsay Stafford Mader, *Sixth Annual Atticus Finch Day Scheduled for May 2 in Bryan*, TEX. BAR BLOG (Apr. 22, 2014), <http://blog.texasbar.com/2014/04/articles/special-event/sixth-annual-atticus-finch-day-scheduled-for-may-2-in-bryan> (describing the Atticus Finch Day efforts to curtail unethical behavior and how all attendees receive a copy of the Creed).

213. See Crowley, *supra* note 199, at 1097 (valuing the Creed’s function as a training tool for lawyers); Johnson, *supra* note 11, at 214 (identifying a need to educate law students in order to cultivate ethical principles); Spivey, *supra* note 130, at 737 (urging the promotion of the Creed in schools); Letter from George M. Thurmond to Eugene A. Cook, *supra* note 95 (suggesting law schools stress the Creed in legal ethics classes); Letter from Mark G. Yudof to Eugene A. Cook, *supra* note 98 (praising the standards of the Creed and opining that it is important for law students to learn about the Creed prior to graduation).

214. See Stone et al., *supra* note 3, at 131–32 (claiming judges are in the best position to champion the Creed and including a judge’s personal experiences of how the Creed is incorporated within the courtroom and how the judge believes the “Creed is the best control device available to trial judges”); Email from Kelly Frels, *supra* note 17 (“I would like for judges to cite and use the Creed more in their court[r]ooms.”).

215. See Cook et al., *supra* note 3, at 679 (deducing ethical behavior is more profitable than Rambo litigation).

216. See Sprouse, *supra* note 45, at 1107 (describing personal interactions with lawyers that lead Sprouse to believe all lawyers aspire to a high ethical standard).

217. See Walker & Cerniglia, *supra* note 2, at 1307–09 (discussing the American Inns of Court’s desire to resurrect civility among lawyers); see also Grenardo, *supra* note 80, at 6–7 (examining the progress of the American Inns and their contribution to civility in Texas); Johnson, *supra* note 11, at 213–15 (interviewing Chief Justice Wallace B. Jefferson, who recognized the American Inns of Court’s role in developing lawyers who understand the meaning of the Creed); David Lemons, *Return to Civility: How the American Inns of Court Foundation is Promoting Professionalism and Ethics Through Mentoring*, 76 TEX. B.J. 207, 207–08 (2013) (surveying the contribution of American Inns to civility); Stone et al., *supra* note 3, at 133 (alluding to the success of the Inns in promoting civility).

218. See Furgeson, *supra* note 80, at 1113 (describing the 1993 federal rule revisions as the federal approach to incivility and abusive litigation).

Center for Legal Ethics.<sup>219</sup> The *Dondi* opinion is a prime example of a contributing factor. In *Dondi*, an exasperated court sat en banc, and in an unprecedented move, sent a clear message to lawyers that abusive tactics would not be permitted.<sup>220</sup> According to Hecht, the *Dondi* opinion essentially collapsed the lingering abusive use of sanctions overnight.<sup>221</sup> Although the Creed is not the sole contributor to improved civility, it has played a significant role.<sup>222</sup>

## IX. CONCLUSION

On the Texas Lawyer's Creed's twentieth anniversary, it was "no shock that people haven't read [the Creed]."<sup>223</sup> Five years later, this statement still holds true. Nevertheless, the Creed continues to serve as a useful tool to all lawyers without serving as a basis for sanctions. The Creed allows attorneys to perform many powerful feats, such as diffusing a highly volatile situation with opposing counsel, educating clients and appropriately guiding their expectations, and wrangling in attorneys who need gentle reminders from the court about how lawyers should behave.<sup>224</sup> As James H. "Blackie" Holmes III, instrumental in drafting the Creed, said, "Just to be aware of the [C]reed's existence is a step in the right direction. Knowledge of its contents is a giant step in the right direction, and adherence to its aspirational dictates is the utopia for which we strive."<sup>225</sup> Holmes added, "Only by unified effort within the legal

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219. See Grenardo, *supra* note 80, at 4–6 (commending the Texas Center for Legal Ethics for their role in improving civility in Texas); Hilgers, *supra* note 198, at 1089 (stressing the Texas Center for Legal Ethics as an important resource for lawyers); Smaby & Godbey, *supra* note 8, at 906–07 (illustrating the formation and efforts of the Texas Center for Legal Ethics); Interview with Nathan Hecht, *supra* note 8 (crediting the Texas Center for Legal Ethics for some of the improvement in the ethical landscape of Texas).

220. Interview with Nathan Hecht, *supra* note 8; see also Albright, *supra* note 25, at 18 (asserting the court sent instructions to the entire bar and promulgated standards of conduct).

221. Interview with Nathan Hecht, *supra* note 8.

222. See Crowley, *supra* note 199, at 1096 (proclaiming the Creed works); Hagans et al., *supra* note 57, at 834 (opining the Creed's beneficial purpose, but also acknowledging it was not "the final and complete answer"); Huffman, *supra* note 6, at 832 (claiming lawyer behavior has improved but questioning whether the Creed is the sole contributor to the improvement); Sprouse, *supra* note 45, at 1108 (noting the Creed's legitimate purpose); Stone et al., *supra* note 3, at 131 (restating a judge's conclusion that the Creed was the turning point and that civility since then has improved).

223. Smaby & Frels, *supra* note 4, at 838.

224. See Campbell, *supra* note 49, at 113 (encouraging lawyers to educate clients on the role civility serves in the judicial process); Cook et al., *supra* note 3, at 677 (commenting on the obligation to educate clients about a lawyer's duty to society); Hilgers, *supra* note 198, at 1089 (directing lawyers use the Creed to educate clients on the level of professionalism expected by the profession).

225. Alan Hunt, 'Professionalism Must Come from Within,' *Lawyers Told*, BAYLOR (June 9, 2003), <http://www.baylor.edu/mediacommunications/news.php?action=story&story=5193>.

community will the erosion of professionalism ever be reversed. I believe that the guidelines and creeds are a magnificent start in the solution of the present problems within the legal community.”<sup>226</sup>

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<sup>226</sup> *Id.* This Comment ends with these quotations to honor the legacy of Justice Holmes. He passed away in 2015, shortly before interviews began for this Comment. He was instrumental to the formation and promulgation of Creed and well respected by his peers.

## APPENDIX

Below is a compilation of cases citing to the Creed. Cases are arrayed alphabetically.

1. *Aguilar v. Anderson*, 855 S.W.2d 799 (Tex. App.—El Paso 1993, writ denied).
2. *Braden v. S. Main Bank*, 837 S.W.2d 733 (Tex. App.—Houston [14th Dist.] 1992, writ denied).
3. *Brown v. Bandai Am. Inc.*, No. 3-01-CV-0442-R, 2002 WL 1285265 (N.D. Tex. June 4, 2002).
4. *Bullard v. Chrysler Corp.*, 925 F. Supp. 1180 (E.D. Tex. 1996).
5. *Byas v. State*, 906 S.W.2d 86 (Tex. App.—Fort Worth 1995, writ ref'd) (per curiam).
6. *Caldwell v. River Oaks Tr. Co.*, No. 01-94-00273-CV, 1996 WL 227520 (Tex. App.—Houston [1st Dist.] May 2, 1996, writ denied) (not designated for publication).
7. *Carnival Corp. v. Beverly*, 744 So.2d 489 (Fla. Dist. Ct. App. 1999).
8. *Checker Bag Co. v. Washington*, 27 S.W.3d 625 (Tex. App.—Waco 2000, pet. denied).
9. *Clark v. Bres*, 217 S.W.3d 501 (Tex. App.—Houston [14th Dist.] 2006, pet. dism'd).
10. *Cont'l Carbon Co. v. Sea-Land Serv., Inc.*, 27 S.W.3d 184 (Tex. App.—Dallas 2000, pet denied).
11. *Delaney v. Univ. of Hous.*, 835 S.W.2d 56 (Tex. 1992).
12. *Delta Air Lines, Inc. v. Cooke*, 908 S.W.2d 632 (Tex. App.—Waco 1995, orig. proceeding).
13. *DolgenCorp of Tex., Inc. v. Lerma*, 288 S.W.3d 922 (Tex. 2009) (per curiam).
14. *Dondi Props. Corp. v. Commerce Sav. & Loan Ass'n*, 121 F.R.D. 284 (N.D. Tex. 1988).
15. *Downer v. Aquamarine Operators, Inc.*, 701 S.W.2d 238 (Tex. 1985).
16. *Edberg v. Neogen Corp.*, 17 F. Supp. 2d. 104 (D. Conn. 1998).
17. *EEOC v. Chemtech Int'l. Corp.*, No. Civ. A. H-94-2848, 1995 WL 608355 (S.D. Tex. July 21, 1995).
18. *Emmons v. Purser*, 973 S.W.2d 696 (Tex. App.—Austin 1998, no pet.).
19. *Exxon Chem. Patents, Inc. v. Lubrizol Corp.*, 131 F.R.D. 668 (S.D. Tex. 1990).

20. FDIC v. Cheng, 832 F. Supp. 181 (N.D. Tex. 1993).
21. Fed. Sav. & Loan Ins. Corp. v. Vill. Creek Joint Venture, 130 F.R.D. 357 (N.D. Tex. 1989).
22. Gleason v. Isbell, 145 S.W.3d 354 (Tex. App.—Houston [14 Dist.] 2004, no pet.) (per curiam).
23. Greathouse v. Charter Nat'l Bank-Sw., 851 S.W.2d 173, 177 (Tex. 1992).
24. Greene v. Young, 174 S.W.3d 291 (Tex. App.—Houston [1st Dist.] 2005, pet. denied).
25. Hamill v. Level, 900 S.W.2d 457 (Tex. App.—Fort Worth 1995), *rev'd per curiam*, 917 S.W.2d 15 (Tex. 1996).
26. Hanley v. Hanley, 813 S.W.2d 511 (Tex. App.—Dallas 1991, no writ).
27. Healix Infusion Therapy, Inc. v. Helix Health, LLC, Civ. A. No. H-08-0337, 2008 WL 1883546 (S.D. Tex. Apr. 25, 2008) (mem. op.).
28. Horner v. Rowan Co., Inc., 153 F.R.D. 597 (S.D. Tex. 1994).
29. *In re* A.D., 287 S.W.3d 356 (Tex. App.—Texarkana 2009, pet. denied).
30. *In re* Cash Media Sys., Inc., 326 B.R. 655, (Bankr. S.D. Tex. 2005).
31. *In re* City of Lancaster, 228 S.W.3d 437 (Tex. App.—Dallas 2007, orig. proceeding).
32. *In re* Hasbro, Inc., 97 S.W.3d 894 (Tex. App.—Dallas 2003, orig. proceeding), *judgm't vacated w.r.m.*, No. 05-02-01817-CV, 2003 WL 1983720 (Tex. App.—Dallas Apr. 30, 2003) (mem. op.).
33. *In re* of J.B.K., 931 S.W.2d 581 (Tex. App.—El Paso 1996, no writ).
34. *In re* Jaffe, 585 F.3d 118 (2d Cir. 2009) (per curiam).
35. Kings Park Apartments, Ltd. v. Nat'l Union Fire Ins. Co. of Pittsburgh, Pa., 101. S.W.3d 525 (Tex. App.—Houston [1st Dist.] 2003, pet. denied).
36. Kurmin v. Thermaflo, Inc., No. 2:07-CV-00554-TJW, 2009 WL 1421173 (E.D. Tex. 2009) (mem. op.).
37. Lelsz v. Kavanagh, 137 F.R.D. 646 (N.D. Tex. 1991).
38. McLeod, Alexander, Powel & Apffel, PC v. Quarles, 894 F.2d 1482 (5th Cir. 1990).
39. PNS Stores, Inc., v. Rivera, 379 S.W.3d 267 (Tex. 2012).
40. Owens v. Neely, 866 S.W.2d 716 (Tex. App.—Houston [14th Dist.] 1993, writ denied).
41. Rawlins v. Rawlins, 324 S.W.3d 852 (Tex. App.—Houston [14th Dist.] 2010, no pet.).
42. Resolution Tr. Corp. v. Tarrant Cty. Appraisal Dist., 926 S.W.2d

- 797 (Tex. App.—Fort Worth 1996, no writ).
43. *Schlafly v. Schlafly*, 33 S.W.3d 863 (Tex. App.—Houston [14th Dist.] 2000, pet. denied).
  44. *Shaw v. Greater Hous. Transp. Co.*, 791 S.W.2d 204 (Tex. App.—Corpus Christi 1990, no writ).
  45. *Sossi v. Willette & Guerra*, 139 S.W.3d 85 (Tex. App.—Corpus Christi 2004, no pet.).
  46. *Tex. Sting, Ltd. v. R.B. Foods, Inc.*, 82 S.W.3d 644 (Tex. App.—San Antonio 2002, pet. denied).
  47. *Titan Indem. Co. v. Old S. Ins. Grp., Inc.*, 221 S.W.3d 703 (Tex. App.—San Antonio 2006, no pet.).
  48. *TransAm. Natural Gas Corp. v. Powell*, 811 S.W.2d 913 (Tex. 1991).
  49. *Trautmann v. Cogema Mining, Inc.*, No. 5:04-CV-117, 2007 WL 869501 (S.D. Tex. Mar. 21, 2007).
  50. *Twist v. McAllen Nat'l Bank*, 248 S.W.3d 351 (Tex. App.—Corpus Christi 2007, orig. proceeding).
  51. *Union City Body Co., v. Ramirez*, 911 S.W.2d 196 (Tex. App.—San Antonio 1995, no writ).
  52. *Warrilow v. Norrell*, 791 S.W.2d 515 (Tex. App.—Corpus Christi 1989, writ denied).
  53. *Wash. v. McMillan*, 898 S.W.2d 392 (Tex. App.—San Antonio 1995, no writ).
  54. *Wreyford v. State*, No. 06-10-00122-CR, 2011 WL 917488 (Tex. App.—Texarkana Feb. 16, 2011, no pet.) (mem. op., not designated for publication).