

TWENTY YEARS OF THE TEXAS CENTER FOR LEGAL ETHICS

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Let's say you are representing a client in a commercial dispute. After sending a demand letter, you hear from a lawyer and you talk settlement. When that fails, you file a lawsuit and send the lawyer a courtesy copy of the petition. The answer date passes, and no answer is filed with the court. You are entitled to take a default judgment. What's your next move?

Your answer may depend less upon what the law says than on more personal factors, such as where you practice, or how you were trained. Or when you were trained. Or who trained you.

Some lawyers argue that quietly taking a default judgment is not only permissible, but is mandated by the attorney's obligation to act in the best interest of the client. And clearly, the best outcome for the client is to take the default. Besides, these lawyers say, it is not their job to correct the mistakes of opposing counsel, and there is no way to know if the lawyer was even hired to file an answer in the first place.

But other attorneys would maintain that in this situation — where the defaulting party was previously represented by counsel — the attorney has an obligation to at least determine if the lawyer still represents the client and, if so, to advise him or her of the oversight. Failure to do so not only violates the traditional courtesies extended to fellow lawyers, but also serves to elevate tactics over substance to the point that the interests of justice are undermined.

THE NEED FOR PROFESSIONALISM

This tension between zealous advocacy and the need for civility in dispute resolution has always been with us, but it became a particularly pernicious problem for the legal profession in the 1980s. Lawyers and judges across the country began to discern a notable increase in nastiness and pettiness by some members of the bar. Obstructionism, uncooperativeness, delay, and other tactics became more prevalent, and some likened litigation to war, where the ends justified the means if it meant a win for the client.

Opponents of this new trend pointed out that, despite expertise with laws and rules, our profession has always been governed by a set of unwritten rules regarding appropriate professional behavior in dealing with judges, clients, and fellow lawyers. Traditionally, these rules were passed down informally, either by lawyer mentors or bar associations, but rapid changes in the size and scope of the profession meant that these mechanisms were no longer sufficient. The traditional legal culture based on civility was slowly unraveling, leading to unfortunate consequences.

First, the increased infighting was making it more difficult to protect the client's interests. Lawyers faced the unpleasant choice of either reluctantly engaging in these tactics themselves or potentially leaving their clients at a competitive disadvantage in this new legal environment.

Second, and perhaps more troubling, the litigation-as-war metaphor was extremely distasteful to large segments of the public, who viewed it mostly as an excuse for lawyers to increase fees by bashing each other at the client's expense. Meanwhile, the client's interests — justice, fairness, and affordability — fell by the wayside. Most clients do not enjoy conflict for conflict's sake, and forcing them to engage in numerous petty battles did nothing to make them believe that the justice system was fair, impartial, and designed to resolve conflicts rather than create them.

THE TEXAS RESPONSE

In Texas, the problem was particularly acute for a couple of reasons. First, ours is a vast state, encompassing a wide variety of cultures and traditions. It is not unusual to hear Houston lawyers complain that Dallas lawyers are overly aggressive, or vice versa. Or to hear smaller town practitioners complain that big city lawyers are overbearing. Or to hear city lawyers complain that small town courts are hostile to outside lawyers. One's view of the profession, it seems, depends on where you are.

Second, the number of lawyers in Texas has grown significantly over the last few decades. A Texas attorney retiring today at the age of 70 likely would have been licensed in 1964, when there were 16,271 active lawyers in the state. Today, there are 83,713 active Texas attorneys, approximately five times as many.



That's roughly the population of San Angelo, spread out over 268,000 square miles. Establishing uniform standards of civility and professionalism by informal means would be virtually impossible today.

It is no surprise that Texas was one of the first states to recognize the problem and take steps to address it. In particular, it became apparent that the profession needed a collective understanding of where to draw the line between zealous advocacy and appropriate civility, which was not going to happen by itself.

That effort began in the late 1980s in Dallas and Houston, where both local bar associations adopted their own version of a lawyer's creed that set forth a code of conduct emphasizing civility over tactical advantage. In 1989, the Texas Supreme Court and Texas Court of Criminal Appeals weighed in, taking the unprecedented step of adopting by court order their own professionalism directive, the Texas Lawyer's Creed.

One of the first of its kind in the nation, the Creed established an authoritative statement of professional standards that apply to every lawyer in the state. But many lawyers, bar leaders, and judges believed it was necessary to do something more to ensure a continuing focus on issues of ethics and professionalism. They wanted to create a permanent organization devoted to these topics.

A NEW WAY TO PROMOTE ETHICS AND PROFESSIONALISM

In 1989, three retired chief justices of the Supreme Court of Texas — Robert Calvert, Jack Pope, and Joe Greenhill — created a nonprofit organization, the Texas Center for Legal Ethics and Professionalism. One of the Center's visionaries, Frank Baker of San Antonio, described it as "a Texas-wide project designed to embody ethics and professionalism ... for the good of the public, the profession, and courts."

Since that time, the organization (recently renamed the Texas Center for Legal Ethics) has been at the forefront of an effort to establish ethics and professionalism as a permanent part of the legal landscape. Through CLE programs, books and other publications, and sponsored events, the Center has served for 20 years as the primary ethics resource for the legal community. Members of the Center include lawyers and judges committed to creating a culture of professionalism across Texas.

Today, the Center is involved in a variety of initiatives, including:

- *The Justice James A. Baker Guide to the Basics of Law Practice Course.* Since 1996, the Texas Supreme Court has required that all newly licensed attorneys take this seminar during their first year of practice. The half-day course is designed to bridge the gap between the law school classroom and real-world practice by using experienced lawyers and judges to educate new lawyers about what is expected of them. Since its inception, more than 30,000 Texas lawyers have completed the course.
- *CLE programming pertaining to ethics and professionalism.* The Center also provides other CLE seminars, all of which offer full ethics credit. The most popular of these courses,

"The Ethics Course," is a half-day course offered several times a year throughout the state. The Center was a pioneer in the use of online CLE programming and now provides a number of courses online.

- *Books and other resources.* The Center offers three books on legal ethics: *A Guide to the Basics of Law Practice*, *The Ethics Course*, and *Opening and Managing a Law Practice*. In addition, the Center's website, www.txethics.org, is a convenient source of valuable resources, including the Texas Disciplinary Rules of Professional Conduct, the Texas Lawyer's Creed, and a searchable database of Texas ethics opinions.

As we move into our 21st year, the Center is embarking on a number of new projects, including:

- *Commemorating the 20th anniversary of the Center and the Texas Lawyer's Creed.* Beginning this November in Austin and continuing into next year, the Center will host a series of events in major Texas cities to highlight the 20th anniversary of the commitment to professionalism in Texas. This will include free CLE ethics credit with an emphasis on civility.
- *"Just the Facts."* The Internet and news media frequently report as fact various misstatements, urban myths, and outright falsehoods about lawyers, judges, and the legal system. These include various "lawsuit abuse" stories that are often entirely fictional. The Center is creating an online database of these incidents with correct facts to ensure that media accounts of the legal system are factually accurate.
- *MCLE assistance to local bar associations.* The Center has traditionally provided local bar associations and other organizations with speakers and programs to provide ethics programs locally. The Center is now expanding that effort by creating a series of luncheon-length DVDs that will be available to these organizations to further expand their MCLE options.

PROFESSIONALISM TODAY

By all accounts, civility and professionalism have improved in the 20 years since the Lawyer's Creed was adopted and the Center began focusing attention on these issues. Thanks to the commitment of many lawyers and judges throughout the state, and to their collective efforts to create a culture where high ethical standards and professionalism are both valued and expected, Texas lawyers are now more aware than ever of our mutual responsibilities.

Balancing advocacy with professional obligations will always be an issue for lawyers. If you are still wondering whether you should always contact opposing counsel before taking a default judgment, the answer is yes. The Texas Lawyer's Creed requires it.

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