

**PROFESSIONALISM:
LESSONS LEARNED**

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CHAPTER 3

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EDUCATION

Texas Tech University, B.B.A. in Finance, 1965
University of Texas School of Law, J.D., 1968

PROFESSIONAL ASSOCIATIONS

Member, State Bar of Texas (since 1968)
Board Certified by Texas Board of Legal Specialization
Family Law (1980 and re-certified in 2015)
Fellow, American Academy of Matrimonial Lawyers
Vice Chairman of the Collaborative Law Committee (2010)
Vice Chair of Professional and Collegiality Committee (2015)
Officer of the Texas Chapter, Treasurer (2001-2002); Secretary (2002-2003); President-Elect (2003-2004); President (2005-2006)
Member, Board of Governors of American Academy of Matrimonial Lawyers, National Chapter (2006-2009)
Fellow, International Academy of Family Lawyers
Member, American Bar Association - Family Law Section
Associate, American Board of Trial Advocates
Member, Board of Trustees for the Collaborative Institute of Texas (2003-2007)
Charter Member, Texas Family Law Foundation
Member, Board of Trustees (2006-2009)
Member, College of the State Bar of Texas
Member, Family Law Section Council, State Bar of Texas (2003-Present)
Secretary (2008-2009); Treasurer (2009-2010); Vice-Chair (2010-2011);
Chair (2011-2012); Immediate Past Chair (2012-2013)
Life Fellow, Texas Bar Foundation
Life Fellow, American Bar Foundation (2006-Present)
Listed in the Martindale-Hubbell Bar Registry of Preeminent Lawyers
Member, Texas Academy of Family Law Specialists
President, Travis County Family Law Advocates (2000-2001)
President, Political Action Committee (2001-2002)
Member, State Bar Task Force on Reorganization of the Office of General Counsel (1994)
Member, Austin Bar Association
Life Fellow, Austin Bar Foundation

AL PROFILE & HONORS

Practice includes family law, including litigation, mediation and arbitration, and collaborative law.
Listed in *The Best Lawyers in America*, Family Law Section (1987-Present)
Listed in *Austin Monthly*, [The Best Lawyers in Austin - Family Law](#) (2002)
Named by *Texas Monthly Magazine* as: "Texas Super Lawyers" (2003-Present), one of the "Top 50 Lawyers in Central/West Texas Region" (2004, 2007, 2012, 2013, 2015, 2016, 2017, 2018), and one of the "Top 100 Lawyers in Texas" (2007)
Received President and Chair's Courage and Integrity Award given by Planned Parenthood Federation of America (2004)
Received Good Guys and Gals Award given by the National Women's Political Caucus, Texas Chapter (2004)
Received the "Distinguished Lawyer Award" by the Austin Bar Association (2008)

Received the “Outstanding Fundraiser Award” given by the Association of Fundraising Professionals, Austin Chapter (2008)
Named “Lawyer of the Year in Central Texas” by Best Lawyers (2009)
Winner of the *Sam Emison Award*, voted by the Texas Association of Family Law Specialists (2013)
Recognized for Contributions to the Advancement of Professionalism and Collegiality by the President of the American Academy of Matrimonial Lawyers (2015)
Received the “Larry York Mentor Award” by the Austin Bar Association (2016)
“AV” rating, Martindale-Hubbell Legal Directory
Received the Texas Bar Foundation “Outstanding 50-year Lawyer Award” (2019)

LEGAL SEMINARS AND WRITINGS

Author/Speaker, State Bar of Texas Advanced Family Law Drafting Course - *The Use of Paralegals in Family Law Cases* (1995)
Author/Speaker, State Bar of Texas Advanced Family Law Course - *Valuation and Appraisals* (1997)
Author, State Bar of Texas Advanced Family Law Courses - *Ethical Traps in Family Law Cases: Avoiding Land Mines* (1998)
Author, State Bar of Texas Advance Family Law Course - *In the Trenches: Winning Techniques in Family Law Litigation* (1998)
Author, State Bar of Texas Advanced Family Law Course - *Securing and Collecting What Your Client Got* (1999)
Author/Speaker, Ultimate Trial Notebook for Family Law - *The Use of Paralegals in Family Law Cases* (2000)
Speaker, State Bar of Texas Advanced Family Law Course - *Characterization and Tracing* (2003)
Author/Speaker, Advanced Family Law Course - *Professionalism in Family Law* (2004)
Speaker, 1st Annual Collaborative Law Seminar - *The Use of Collaborative Law in Your Practice* (2004)
Author/Speaker, Ultimate Trial Notebook - *Pretrial and Scheduling Orders* (2004)
Speaker, University of Texas Family Law on the Front Lines - *Collaborative Law* (2004)
Author/Speaker, Collaborative Law Spring Retreat - *Leadership and Self-Renewal for Collaborative Professionals* (2005)
Author/Speaker, University of Texas Family Law on the Front Lines - *Impaired Clients: Ethical Issues and Advocacy* (2005)
Author/Speaker, Associate Judge’s Training - *The Hague Convention* (2005)
Author/Speaker, State Bar of Texas Advanced Family Law Course - *Ethics & the Enhancement of the Attorney-Client Relationship* (2005)
Author/Speaker, Texas Advanced Paralegal Seminar – *Professionalism & Ethics for Paralegals* (Midland 2006)

Speaker, Paralegal Association of the Permian Basin – *Ethics* (2006)

Speaker, Texas Academy of Family Law Specialists’ Trial Institute - *Litigation Alternative - Collaborative Law* (Reno, Nevada 2006)

Moderator of Judges’ Panel, State Bar of Texas Marriage Dissolution Institute (2006)

Course Director, Family Law, State Bar of Texas Annual Meeting (Austin 2006)

Course Director, *Ultimate Trial Notebook* (New Orleans, Louisiana 2006)

Speaker/Panelist, State Bar of Texas Family Law on the Front Lines - *Representing the Difficult Client* (Galveston 2007)

Workshop Moderator, State Bar of Texas Advanced Family Law Course, *Advanced Collaborative Law* (San Antonio 2007)

Speaker, State Bar of Texas Advanced Family Law Course - *The Not So Easy To Identify Executive Employment Benefits* (San Antonio 2007)

Author/Speaker, State Bar of Texas Advanced Family Law Course - *The Professional Practice: Yourself, Your Office, and Your Relationships with Others* (2008)

Author/Speaker, State Bar of Texas Advanced Family Law Course - *Getting to Closure and Managing Client Relations, Collaborative Family Law Track* (2008)

Speaker, Collaborative Law Institute of Texas Boot Camp - *Ethics in Collaborative Law* (2009)

Speaker, International Academy of Matrimonial Lawyers Annual Meeting, USA and Canadian Chapters, *The Path to Yearning for Zion/FLDS* (San Antonio 2009)

Speaker/Panelist, University of Texas School of Law and Texas Family Law Foundation’s 10th Biennial *Family Law Legislative Update* (2009)

Speaker, Austin Bar Association - *Family Law Practice in Difficult Economic Times* (2009)

Panelist, State Bar of Texas Advanced Family Law Course – *Joinder of Third Parties: Entities and/or Individuals* (Dallas 2009)

Speaker/Panelist, State Bar of Texas Advanced Family Law Course – *Valuation: Approaches, Assets and Authority* (2010)

Speaker, State Bar of Texas Family Law Boot Camp – *Alternative Dispute Resolution* (San Antonio 2010)

Author/Speaker, Marriage Dissolution Course 101 – *Temporary Orders: What You Can Get and How to Get It* (2010)

Speaker, Marriage Dissolution Course 101 – *Client Screening: It’s a Tough Job, But Somebody’s Got to Do It* (2011)

Co-Course Director, Advanced Family Law Course (2011)

Speaker, Advanced Family Law Course – *Top Ten Property Case You Need to Know* (2012)

Speaker, International Conference on Couple and Family Relations – *Is it Child Abuse and Neglect or Social Policy Gone Awry?* (2012)

Panelist, State Bar of Texas Negotiation Strategies for Lawyers and Negotiation Ethics (Austin 2012)

Author/Speaker, State Bar of Texas Advanced Family Law Course: *The Professional Practice* (2013)

Speaker, Various seminars for the Paralegal Division of the State Bar of Texas, State Bar of Texas, Travis County Bar Association, and Volunteer Legal Services of Central Texas

Speaker, Advanced Family Law Course – *Professionalism in Family Law* (2014)

Speaker Panelist, Civil Litigation – *Witness Testimony: Nailing Your Direct and Cross-Examination* (2014)

Speaker, Technology 360 Conference – *Balancing Your Life in This Technical World* (2014)

Speaker, Marriage Dissolution Institute – *Taking the “High Road” Encourages Integrity* (2015)

Speaker, Family Law 101 – *Basic Litigation Techniques: What Works and What Doesn’t* (2015)

Author/Speaker, Advanced Family Law Course – *Do’s and Don’ts in Trial Preparation/Litigation* (2015)

Speaker, Marriage Dissolution Institute – *Masters of Family Law* (2016)

Speaker, Advanced Family Law Course – *How to Live Long, be Prosperous and be a Professional* (2016)

Panelist, State Bar of Texas New Frontiers in Marital Property Law – *Employee Benefits, How the World is Changing* (Louisville 2016)

Panelist, State Bar of Texas Family Law 101 – *The Top Ten Do’s and Don’ts – Lawyers View* (San Antonio 2017)

Author/Speaker, Advanced Family Law Course – *Professionalism: Lessons Learned* (2019)

ALTERNATIVE DISPUTE RESOLUTION & COLLABORATIVE TRAINING and EXPERIENCE

LBJ School of Public Affairs Advanced Mediation Training (1997)

Advanced Family Law Mediation Training (1997)

Dispute Resolution Center of Austin Mediation Training:

 Basic 40-hour course (2004)

 Family Law course (2004)

Travis County Bar Association Settlement Week Mediator Training

Appointed by Travis County District Judges as court-appointed mediator

Volunteer mediator, Travis County Settlement Weeks (1989-1997)

Volunteer mediator, Williamson County Settlement Week (1999-Present)

Collaborative Divorce Training:

 Basic (2000, 2002, 2003)

 Intermediate (2000)

 Interdisciplinary (2006)

American Academy of Matrimonial Lawyers Arbitration Training (2000)

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EDUCATION

Texas Tech University School of Law, J.D., magna cum laude, 2013
Columbia University Graduate School of Journalism, M.S., 2006
Texas Christian University, B.S., magna cum laude, 2005

ADMITTED

State Bar of Texas 2013

AREA OF PRACTICE

Family Law

AWARDS AND PROFESSIONAL RECOGNITION

Recognized as a Rising Star by Super Lawyers – 2017, 2018, and 2019

PROFESSIONAL ACTIVITIES AND PUBLICATIONS

- Speaker, “Modifications” – Victoria Family Law Essentials Seminar, 2019
- Speaker, “Divorce 101” – Williamson County/WLS Presentation Series, 2018
- Author, “Drafting Enforceable Orders” – Family Law 101 Course, State Bar of Texas 2019
- Co-Author, “Professionalism: Lessons Learned” – Advanced Family Law Course, State Bar of Texas 2019
- Co-Author, “Which Way Do We Go? Drafting Considerations in Jurisdiction” – Advanced Drafting 2017
- Contributor, Texas Family Law Foundation’s *Annotated Texas Family Code 2017*
- Director, Mother Attorneys Mentoring Association of Austin
- Past Vice President, Women Lawyers Section, Williamson County Bar Association
- Member, College of the State Bar of Texas
- Member, Austin Bar Association, Family Law Section
- Member, State Bar of Texas, Family Law Section
- Member, Travis County Women Lawyers Association
- Member, Austin Young Lawyers Association
- Member, Williamson County Bar Association

SPECIALTY TRAINING

Basic Interdisciplinary Training, Collaborative Divorce Texas – 2019
New Ways for Families, Williamson County Bar – 2015
40-hour mediation training – 2012

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PROFESSIONALISM: LESSONS LEARNED

I. INTRODUCTION

There is a Warren Buffett quote that resonates with me: “It takes 20 years to build a reputation and five minutes to ruin it. If you think about that, you’ll do things differently.”

In this business, your reputation is everything. My goal in this paper is to give you tools to safeguard your reputation and your law practice by examining the importance of professionalism. I have been fortunate enough to practice law for 50 years, and it has been the great privilege of my life. I have worked with incredible attorneys who have become lifelong friends, and I have worked with attorneys I try to avoid at the grocery store. I am honored to present on the topic of Professionalism for my esteemed colleagues, and I feel like it would be a wasted opportunity if I did not point out ways we can all work together for the benefit of our shared practice, our fellow lawyers, and our clients. For some, with age comes hubris; I offer this perspective with nothing but humility and hope that the next generation of attorneys will be better than those who came before.

II. PROFESSIONALISM AND THE CLIENT

This is a difficult business. Our clients are experiencing extreme hurt and heartbreak, sometimes in a painfully public way. This hurt is compounded by unreasonable or downright vicious opposing counsel. You cannot drink your client’s Kool-Aid. Clients need a zealous advocate, but they also need someone to help see reason and a way out of the chaos. If you help clients focus on the endgame instead of getting down in the dirt, you will provide the clear-headed guidance clients desperately need.

A. The Cases You Do Not Take

Sometimes the most important cases in your career are the ones you choose not to take. To run a successful and long-lasting law practice, you must properly screen clients and establish clear boundaries about the types of cases you will not take and the traits of clients with whom you do not work well.

1. Screening Clients and Cases

The first step, before you let a client opine about the complexity of his particular case, is to enter the client’s name and opposing party’s name into a conflicts database. Some lawyers use a basic Excel spreadsheet to cross-reference potential conflicts, and some use more sophisticated software. It is essential that you have a consistent method for keeping track of your consultations and clients. When a person comes to your office for a consultation, there is a confidential relationship that prevents you from ethically

representing someone against that person without a waiver.

a. Conflict of Interest

If you or someone in your firm has consulted with or represented a party on the other side of a case, you must politely decline. If an appointment has already been made before the conflict was discovered, cancel it without revealing that you have previously consulted with the opposing party. If you are in a firm, you are prohibited from representing a client that any other attorney in your firm is prohibited from representing. This can be challenging when new attorneys join firms and bring in a list of conflicts, but if anyone has a problem with a client, *everyone* has a problem with that client.

b. Inability to Pay Fees

Part of screening clients properly includes setting a reasonable consultation fee and retainer fee policy. If someone will not be able to pay your consultation fee, it is likely that they will have a difficult time paying your retainer. It is our duty as practitioners to provide pro bono legal services to people who need assistance and qualify. Programs like Volunteer Legal Services and other pro bono organizations screen clients and ensure that they are truly in need of pro bono assistance. Charging a consultation fee, even a reduced one, demonstrates that there is value in our services and our profession.

c. Beyond Your Area of Expertise

Stick to what you know. One of the most valuable services we can provide clients is a good referral network of other attorneys who can handle cases in other specialties. In family law, and particularly in divorces, our cases can venture into complicated areas of tax, bankruptcy, and sometimes criminal law. Reach out to specialists in those areas and ask for help in navigating tricky tangential issues.

d. Beyond Your Geographic Area

There is a unique pain in being “hometowned” when practicing in a foreign county. One of the great benefits we offer clients is the ability to navigate the idiosyncrasies of the courtrooms we frequent and give our clients the opportunity to learn from our experiences in specific jurisdictions. Consider limiting your primary geographic area by listing the counties in which you prefer to practice on your website. If you rarely practice in a county, be honest with your client about it. It is important to be clear about the travel expenses associated with practicing in a distant county and give clients local referrals whenever possible. If you are asked for a referral in a different state, the American Academy of Matrimonial Lawyers is a great resource for qualified and competent attorneys.

e. The El Paso Test

A consultation is not just an opportunity for a client to hire an attorney; it is also a chance for an attorney to determine whether or not a client will be a good fit. You do not need to take every case that walks in the door. If you do, your docket will be filled with people you would rather avoid and, more importantly, you will have neither the time nor the energy for a good case when it comes along. Some of our Austin colleagues talk about putting a client through the “El Paso test.” When deciding whether or not to represent someone, consider if you would want to be on a long road trip with them—imagine being stuck with someone from Austin to El Paso—and if the thought fills you with dread, do not take the case.

B. The Start of a Beautiful Relationship

Any good attorney-client relationship needs boundaries and clearly defined expectations. Clients need clearly communicated rules of engagement on the front end.

1. Intake Paperwork

Your firm’s intake paperwork is the perfect opportunity to demonstrate professionalism and respect to your clients. While our intake paperwork once asked potential clients to identify “husband” and “wife” in a divorce and whether the wife’s maiden name would be restored, we have become more sensitive to the diverse population that we are fortunate to represent. We now ask for potential clients for the identity of their spouses, not husband or wife, and try not to assume that all female clients are married to men and vice versa. Instead of asking whether “wife’s” maiden name is to be restored, we ask for “former/maiden” names of each spouse. Small details like that can make clients feel welcome, regardless of their gender and sexual orientation.

2. Fee Agreements and Billing

A good fee agreement helps a client understand exactly where he or she stands. If a client knows up front that each email and phone call will be billed in six-minute increments, you are less likely to get a nasty email asking why you charge for phone calls after the first billing cycle. Be clear about what activity you are billing a client for, and be consistent in sending bills out at the same time each month.

Do not perform any significant legal work for a client until the retainer has been paid and the fee agreement has been executed. In my office, we often ask clients to maintain an “evergreen” retainer, meaning that clients maintain a specific trust balance during the pendency of their suit. Establishing this boundary up front reduces our need to explain why we are asking for a retainer replenishment and, more importantly, it helps us identify clients who are falling behind on their bills

far sooner than a traditional trust account would. It also maintains a better relationship between the client and the firm when the firm is not chasing money.

Your fee letter should: (1) specify whether it is an evergreen contract and explain what that entails; (2) give information about the hourly rates charged by people who may work on the client’s file; (3) explain in detail how the retainer fee will be applied to each bill; (4) notify the client that he or she will receive monthly statements with detailed work summaries; and (5) include the client’s signature and be countersigned by an attorney after the retainer is paid.

Send bills in predictable intervals and show your work; clients who see and understand the work you put into their cases are far less likely to complain about your fees.

3. Opening the File

You should have a process in place for opening the file immediately after the client pays a retainer. Whether paper or digital, you should begin the case by organizing a file with client materials inside. For digital files, it is easier to have a folder template prepared so you are not reinventing the wheel every time a new client signs up. One of the key aspects of opening a file is ensuring that you have a person assigned to handle the initial steps of the case.

In our firm, each file is assigned to an attorney and a paralegal. When the attorney hands the intake notes and paperwork to the assigned paralegal to set up the file, the paralegal knows it is his or her duty to check the notes and ask questions about the immediate next steps.

C. Live by the Creed

The Texas Lawyers’ Creed sets out 11 tenets for proper representation of a client:

1. Advise the Client of the Creed

Our fee agreement includes a reference to the Texas Lawyers’ Creed, and some firms include the Texas Lawyers’ Creed as an attachment to the agreement.

2. Get Things Moving

Communicate with clients about their anticipated timelines and how your schedule may affect the client’s case. If a client wants a quick turnaround and your calendar is packed with hearings, realistically assess your ability to work the case on deadlines that fit with your client’s expectations. The most commonly filed grievance is that of neglect. If you cannot adjust the client’s expectations and do not have the staff or the time to manage the case, you are better served by passing it to another attorney.

3. Be Objective

You can be a zealous advocate for your client without becoming blind to the realities of the case. Objectivity allows you to cultivate trust and loyalty with a client while remaining capable of advising clients of potentially negative outcomes and making hard decisions.

4. Be Courteous

Treat your clients with courtesy and respect, and maintain civility when your client sees how you interact with opposing parties, staff members, and opposing counsel. Civility and courtesy are not a sign of weakness.

5. Explain Expected Behavior

Advise your clients that you expect them to act in a courteous manner. Help clients prepare for the stressors of formal proceedings by instructing them as to proper behavior and dress for a given legal situation. Most of our clients have never been in a lawsuit before and are looking to us to provide guidelines and expectations.

6. Be Polite to the Other Party

I always warn clients that they are going to feel like I am being too nice to the other party. Very little is gained by taking an aggressive stance toward an opposing party. Our clients do not need us to vilify and malign their soon-to-be-ex. Also, in a business where most of our cases settle out of court, I am reminded of the old Southern saying, you may accomplish more with a spoonful of sugar than a gallon of vinegar.

When dealing with pro se opponents, one should be especially careful. We have a policy that only the attorney on the case will deal with the pro se litigant, not our staff, and only in limited circumstances. We inform pro se parties that our communications will be in writing so each side has an accurate record of the exchange.

7. Do Not Harass the Other Party

Most of our clients are good people in difficult times of their lives. Sometimes those nice people will want to skip over reasonable settlement and go scorched-earth. Spiteful clients are difficult to deal with, and many will not listen to reason. If you cannot manage your client, you should explain that you will not act in harassing or financially punitive ways to harm the other side; if a client cannot understand why you refuse to risk your reputation to destroy the life of his ex, you should withdraw.

8. Do Not Delay

Advise your client that you will not utilize tactics to unnecessarily delay the case.

9. Do Not Pursue Meritless Claims

When a client comes in with unrealistic expectations, you have an ethical obligation to explain to your client that it is a waste of resources to pursue an impossible goal. Rule 3.01 of the Texas Disciplinary Rules of Professional Conduct says, "A lawyer shall not bring or defend a proceeding, or assert or controvert an issue therein, unless the lawyer reasonably believes that there is a basis for doing so that is not frivolous."

If you pursue a frivolous claim, it is not only your client who suffers. It does not take many frivolous cases for an attorney to develop a reputation around the courthouse as a time waster with poor judgment. Judges and other attorneys notice when you bring frivolous suits, and your professional reputation will suffer.

10. Do Not Allow the Client to Dictate Interactions with Opposing Counsel

Opposing counsel is not your enemy. They are not necessarily your friend, either, but they are not your enemy. Some clients want an attorney to be blindly aggressive toward the other lawyer and the other party, buying into the "bulldog lawyer" trope. When clients complain about civility toward opposing counsel, I explain that we are colleagues at the Bar and are required to extend civility to each other. If opposing counsel requests an extension and it will not harm your client, grant the extension. There is a special place in lawyer hell for the attorney who, when asked for an extension due to a funeral, responds with "I'll ask my client." You do not need to ask your client for permission to be a decent human being; grant the extension and inform your client.

11. Present Options for Resolution

Talk to your clients about mediation and other methods of alternative dispute resolution. Many of the lawyers in my firm are trained in Collaborative Divorce and are able to provide that option to clients. I encourage you to learn about the Collaborative Divorce option and provide clients with a range of options when seeking legal counsel.

III. PROFESSIONALISM AND OTHER ATTORNEYS

There is a shift that needs to occur in our profession. We need to prioritize welcoming and supporting women lawyers, LGBTQ lawyers, and lawyers of color in the legal community. If you do not believe women lawyers have problem in the current era, I urge you to read the employee gender discrimination suit against Jones Day filed in California earlier this year.¹ The sexism and discrimination experienced by some lawyers is difficult to read about, but it is important to recognize that some members of our

1 <https://www.documentcloud.org/documents/5793276->

[JonesDaycomplaint.html](#)

profession need to learn and practice the fundamentals of professionalism.

A. 21st Century Professionalism

Things are drastically better for women and minorities in this profession in the year 2019 than they were when I began practicing, but that does not mean things are good enough. I am lucky to be surrounded by intelligent women and young people who remind me that things are changing for the better. With that in mind, I offer the following advice:

1. “Are You the Court Reporter?”

I find a good rule of thumb is to never ask a female attorney a question you would feel uncomfortable asking a male attorney. I can almost guarantee that no male lawyer here has been approached at the beginning of a deposition and asked the question that makes many women cringe: “Are you the court reporter?” Do yourself a favor and assume that the women and people of color you meet in legal settings are attorneys. No one will be offended if you assume they are an attorney, but consider how it would feel to frequently be mistaken for a court reporter or facilities staff. Also consider whether you are solely assuming someone is not an attorney based on their age, gender, or ethnicity. When in doubt, “are you the attorney?” is a much better place to start. Implicit bias about what an attorney “should” look like is not helping our colleagues who are female lawyers and/or lawyers of color.

Other considerations: Consider extending a hand to a female colleague instead of putting an arm around her. Unless she has shared that she is expecting a child, don’t ask a woman when she is due to have a baby, and please refrain from asking if she is really coming back after maternity leave. While you may not mean offense, please do not call a female attorney “young lady” or “sweetie.” Reconsider commenting on a female colleague’s attire or appearance. These things may seem small individually, but they add up.

2. Promoting and Retaining Women

The Family Law Section of the Texas Bar is better than the national average when it comes to female attorneys and lawyers of color; the State Bar of Texas Department of Research and Analysis’s *Women Attorneys: Attorney Statistical Profile (2018-19)* shows that there are more women lawyers in family law than

any other practice area, with 52% of the attorneys in the Family Law section identifying as female.² Similarly, the State Bar of Texas Department of Research and Analysis’s *Racial/Ethnic Minority Attorneys: Attorney Statistical Profile (2018-19)* reports there are more lawyers who identify as racial or ethnic minorities in the Family Law Section than any other in Texas, and almost 24% of family law attorneys identify as a racial/ethnic minority.³ While we are more representative of the population within our Section, we as a profession have some wide-scale problems. According to the American Bar Association’s “A Current Glance at Women in the Law: April 2019” report, 50% of J.D.s awarded in the United States are women, 48.7% of summer associates and 45.91% of associates in private practice are women, but only 22.7% of law firm partners and only 19% of equity partners are women.⁴ The National Association of Women Lawyers’ *Ninth Annual National Survey on Retention and Promotion of Women in Law Firms* found that only 8% of equity partners in the nation’s 200 largest law firms are lawyers of color.⁵

a. Work and Family Life

The relatively small number of women who are promoted to equity partners cannot be solely attributed to women getting married and having families. We should support women attorneys who have families and give them the flexibility to have families and be lawyers. For that matter, we need to encourage parents of both genders to have fulfilling family lives outside of the office. The members of our profession should not have to choose between having families and having successful careers. I always recommend doing what I did; ask your daughter to join you in your law practice and see how that improves work-life balance. We need to take a hard look at why we, as a profession, are failing to retain women in law practice.

According to the American Bar Association’s *You Can’t Change What You Can’t See: Interrupting Racial and Gender Bias in the Legal Profession* report, women of all ethnicities reported that they suffered from the “mommy track” treatment (as compared to “partner track”) after returning to work after having children, including receiving lower-quality work assignments, being overlooked for promotions, and being unfairly disadvantaged for working a reduced or more flexible schedule.⁶

² https://www.texasbar.com/AM/Template.cfm?Section=Demographic_and_Economic_Trends&Template=/CM/ContentDisplay.cfm&ContentID=44210

³ https://www.texasbar.com/AM/Template.cfm?Section=Demographic_and_Economic_Trends&Template=/CM/ContentDisplay.cfm&ContentID=44209

⁴ https://www.americanbar.org/content/dam/aba/administrative/women/current_glance_2019.pdf

⁵ Chung, Renwei, 7 Highlights from the 2016 Survey on Retention and Promotion of Women in Law Firms, Above the Law, (October 2015)

⁶

b. The Mental Load

While the Family Law Bar has more female attorneys than many other areas of law, it is worthwhile to evaluate the mental load that we may disproportionately place on women at the office. Do male and female associates or partners equally share the responsibility for planning firm lunches or purchasing staff gifts? Consider whether the “office housework” and administrative tasks are more frequently assigned to women in your office, especially attorneys who are women of color. Are pro bono cases handled disproportionately by women in your office? If so, these non-billable tasks or cases can have a significant impact on the trajectory of a female attorney’s career. Many firms base bonuses on billed-and-collected hours; if more women are working pro bono cases, their pay structure—and often opportunities to be elevated to partner—can be harmed. We all need to be doing pro bono work, so focus on helping your entire practice provide that service instead of just a select few.

c. Money Talks

Disparity in compensation is another problem in our field. The ABA’s *A Current Glance at Women in the Law: April 2019* report cites Bureau of Labor Statistics data for 2018 that shows female attorneys are paid 80% of their male counterparts; the U.S. Census Bureau data for 2018 indicates it is actually closer to 76% for full-time, year-round attorneys.⁷ The pay disparity is not limited to the average attorney. According to that 2018 Census Bureau data, when attorney earnings peak mid-career, the “super earners” in the top 10 percent (highest income earning) female attorneys earn more than \$300,000.00 per year, while the top 10 percent of male attorneys are earning more than \$500,000.00 per year. Female attorneys are just as valuable as male attorneys and should be compensated accordingly.

B. Texas Lawyer’s Creed on Professionalism and Other Attorneys

Courtesy, Candor, and Cooperation: There are 19 principles within the Texas Lawyers’ Creed regarding dealing with other lawyers.

1. Be Courteous, Civil, and Prompt

Show opposing counsel the courtesy of promptly replying to emails and returning phone calls. Within those emails or on those phone calls, comport yourself in a way that you and your staff can respect. As we tell our clients, draft every email as if it will be read aloud in court.

2. Do Not Quarrel Over Style Issues

Most clients do not want to pay for an attorney or paralegal to spend much time reformatting an otherwise correct document to look a certain way. Unless the formatting is especially egregious, let it be. Mistakes that affect the substance of the order should be remedied, and it does not hurt to run a spell check to ensure that such mistakes do not make their way into your work. Focus your attention on errors or omissions that must be corrected to protect your client or to carry out the ultimate purposes of the document.

3. Identify Revisions

With modern word processing advancements, there is no excuse for sending a revised document without indicating the revisions that were made. Redlining documents in Word or creating a comparison in PDF eliminates confusion and distrust caused by failure to mark revisions.

4. Make Sure Your Drafting Reflects the Agreement

When you have a Mediated Settlement Agreement or a Rule 11 Agreement, track the language of the agreement unless it is necessary to correct errors, to turn it into ordering language, or to make the provisions clearer or enforceable. We all know lawyers who sneak additional language into otherwise boilerplate paragraphs. When attorneys act in this manner or encourage their staff to do so, it creates unnecessary fees and a lack of trust within our legal community.

5. Be Prompt with Cancellation Notices

If you need to cancel depositions, hearings, or other legal proceedings, be courteous to the clients, court reporters, opposing attorneys, and mediators by notifying them of cancellations as soon as reasonably possible. Many professionals can fill their time with another paying client when given adequate advance notice.

6. Agree to Reasonable Requests

As mentioned in the earlier paragraphs regarding the attorney-client relationship, respectfully agree to grant reasonable requests for deadline extensions or waivers of certain procedures when doing so does not adversely affect your client. If your client is not harmed, agree to grant the extension.

7. Be Reasonable in Your Methods of Serving Notice

Attorneys are instructed not to “serve motions or pleadings in any manner that unfairly limits another party’s opportunity to respond.” An ethical line is crossed if you serve a hearing notice or deposition notice on the other side for a time when you know the opposing

https://www.americanbar.org/groups/diversity/women/initiatives_awards/bias-interrupters/

⁷ <https://www.census.gov/library/stories/2018/05/women-lawyers.html>

party is unavailable. Similarly, I believe it is against the spirit of the Texas Lawyers' Creed to rush to the courthouse and unnecessarily get an Order to Appear before the answer deadline in a non-emergency situation. Truncating the opposing party's answer period just to move things along and rattle the other side ratchets up legal fees and heightens tension among clients and the attorneys.

8. Try to Resolve Disputes by Agreement

Try to work things out before running to the courthouse.

9. Disagree Without Being Disagreeable

Attorneys can zealously advocate for their clients without being obnoxious. As San Antonio attorney Jim Monnig said in previous versions of the professionalism talk, "You should never get down in the mud and wrestle with a hog. You'll get mud on you and the hog will enjoy it."

10. Do Not Bad-Mouth Opposing Counsel

Do not demonize opposing counsel and make an effort to keep your client away from opposing counsel when waiting for a hearing; proximity is not your friend in a lawsuit.

11. Do Not Take a Default if You Know the Opposing Party is Represented

Notify the other attorney if you intend to take a default or allow a dismissal. Honest mistakes can be made and opposing counsel should be given the benefit of the doubt, but if you know there is an attorney on the other side, act accordingly.

12. Be Prompt and Accurate in Submitting Orders to the Court

When you are tasked with drafting an order after a hearing, be accurate and prompt in drafting. It is wise to request a copy of the transcript before leaving the courthouse. The cost of a transcript is often worth every penny when it can head off disputes over what the Court said in its ruling. Orders should be submitted to opposing counsel first.

13. Do Not Editorialize to the Judge or the Judge's Staff

Please do not attempt to influence the judge or the court staff by copying the judge's office on correspondence that details the allegations in your case. Communicate with the Court only when necessary for settings, limited administrative issues, or as requested by the Court. Copy opposing counsel on correspondence with the judge's office and reserve your arguments for presentation in the courtroom.

14. Please Schedule by Agreement

Call the opposing side and find out when they are available for hearings and depositions. If one side sets depositions without comparing schedules, it results in a flurry of Motions for Protective Orders, hearing notices, and other procedures that run up fees and do little to resolve the case.

15. Stipulate!

Resolving issues on which the parties agree saves time before and during trial. If you can agree to stipulate certain aspects of a case, submit those stipulations to the Court and save valuable trial time.

16. Do Not Abuse the Discovery Process

If you and your client are sure that there is no community property because the parties were married for six months and neither side has any money, the likely purpose of an extensive discovery request is to harass or intimidate the other side. If your clients agree on the substantive child-related issues, consider whether you need to ask for opposing party's mental health records or the children's educational records.

17. On the Other Hand, Do Not Resist Discovery

If the other party asks for it, and they are entitled to it, turn it over unless a request is truly objectionable. Judges strongly dislike discovery disputes and they should occur rarely.

18. Do Not Ask the Court to Help You Abuse Discovery

Frivolous discovery motions are a waste of your client's time and money.

19. Do Not Seek Sanctions Unnecessarily

Everyone makes mistakes. If you do not believe you have made any mistakes while practicing law, you are not paying close enough attention. Sometimes the conduct on the other side is so egregious that you are not able to proceed in a reasonable way. Make sure your actions are justified before seeking disqualifications or sanctions.

IV. PROFESSIONALISM AND THE COURTS

The Texas Lawyers' Creed demands the following with regard to the relationship between attorneys and judges: "Lawyers and judges owe each other respect, diligence, candor, punctuality, and protection against unjust and improper criticism and attack. Lawyers and judges are equally responsible to protect the dignity and independence of the court and the profession."

The Creed sets out four basic points for the judge/attorney relationship:

A. The Judiciary Should Encourage and Practice Professionalism

Judges should hold attorneys to the highest standards of professionalism by discouraging ex parte communications, requiring opposing attorneys to demonstrate they have made a good faith effort to resolve discovery disputes by agreement, allowing attorneys to proceed without forcing them to “take it into the hall” to negotiate again when the parties have attempted to mediate or negotiate the issues in good faith, reading and refusing to grant restraining orders that go beyond the relief available under the Family Code, and insisting upon high standards of courtesy and decorum in courtrooms. Judges should make reasonable attempts to review files and question the efforts an attorney has made to notify opposing counsel when considering default judgments. If any doubt exists, the judge should have the attorney or court staff call opposing counsel. Civility includes ensuring that honest mistakes or emergencies are not used against opposing sides.

B. Judges Should Treat Lawyers and Litigants with Respect and Courtesy

Judges should conduct their proceedings with the dignity and formality befitting the authority of their positions. When judges are late to a crowded docket, tardiness can mean parties near the end of the docket are unnecessarily forced to reset their hearings, thereby incurring additional fees and inconveniencing clients who are seeking relief from the bench.

When litigants do make it in front of a judge, they are usually inexperienced and fearful of the legal process. Rudeness toward clients creates a bad feeling about the entire process. By the time clients appear in court, they have typically spent significant funds and time on the matter at hand, and being dressed down by a judge for a small infraction causes headaches on the lawyer’s end. It is difficult to calm a client when he or she feels attacked by the judge deciding their case.

C. Lawyers and Clients Should Treat Judges and their Staff with Respect and Courtesy

Some lawyers (typically young, inexperienced, and without a proper mentor) think it is appropriate to complain about a judge’s ruling or demeanor in front of the clients or in front of the world on the internet. This is a bad idea. I am always amazed when people do it. If you are in a “private” Facebook group for lawyers and decide to bad-mouth a judge, your name and your comments are going to get back to the judge. There is no privacy on the internet.

Attorneys should strive to establish a reputation for trustworthiness and professionalism in the courtroom. Be honest with the Court about the cases you cite, your efforts to notice the other side, and your client’s issues. Emphasize the importance of honesty when preparing clients for appearing in front of a judge. Clients are often worried about the negative impact of “bad facts,” but those bad facts are rarely as damaging as lying to a judge.

Building a reputation for honesty and fairness will enable you to build a practice with clients you can be proud to stand beside. Everyone in the courtroom can think of at least one attorney to whom the shadiest of clients seem to gravitate. As a lawyer, you tend to get referrals for clients who share values similar to your own.

The high standards of courtesy we expect to see from judges, court staff, and administrators are the same high standards we should display when dealing with court administration and judges. They are all part of the judicial process and deserve our respect. If you consistently treat the court staff with respect, you are likely to have the added benefit of knowing someone who can help you navigate tricky situations at the courthouse when you need help the most.

V. CONCLUSION

Whether you have practiced for 20 years or 20 months, take time to periodically review the Texas Lawyers’ Creed and evaluate whether you are embodying the Creed in your professional dealings. It can be a good reminder of the way law practice should be.

If you come across a new attorney who seems to be struggling, take the time to sit down and discuss the Creed and offer your insight into managing a life in the practice of law. There are 20,000 more active attorneys in the State Bar of Texas today than there were 10 years ago. Almost one-third of the lawyers in Texas have been licensed 10 years or less, and 36% percent of State Bar Members have been practicing more than 25 years.⁸ There is a tremendous opportunity for learning on both sides if those of us with more than 25 years of experience paired up with a colleague who has practiced for 10 years or less. Newer attorneys can learn from war stories, and more experienced attorneys can learn about the changing standards of professionalism with the younger generation. We all have something to learn, and a little kindness among practitioners can go a long way.

⁸ State Bar of Texas Membership: Attorney Statistical Profile (2018-19)
<https://www.texasbar.com/AM/Template.cfm?Section=Cont>

