

PRESENTED AT

31st Annual Labor and Employment Law Conference

May 31, 2024

Austin, TX

An Officer of the Court

Jason S. Boulette

Author Contact Information:

Jason S. Boulette

Taylor Graham

Boulette Golden & Marin L.L.P.

Austin, TX 78746

jason@boulettegolden.com

512-732-8901

taylor@boulettegolden.com

512-732-2335

TABLE OF CONTENTS

I.	A VERY BRIEF HISTORY OF LAW AND LAWYERS	2
A.	Law Has Been Around Awhile	2
B.	Then We Showed Up in Athens.....	4
	1. <i>First As Judges</i>	4
	2. <i>Then As Speech Writers</i>	5
	3. <i>Next as Paid Advocates</i>	6
	4. <i>But Not Yet As Officers of the Court</i>	7
C.	Before Appearing In Rome	8
	1. <i>This Time as Advisors</i>	8
	2. <i>Then As Advocates (Again)</i>	10
	3. <i>Then Back to Jurists</i>	12
	4. <i>Before Being Absorbed by the Empire</i>	12
D.	Then the Old World	13
	1. <i>Where Ancient Ideas Returned</i>	13
	2. <i>Before Giving Way Again</i>	13
	3. <i>And We Emerged from The King's Court</i>	14
	4. <i>With Some of Us Called to the Bar</i>	14
E.	And Finally the New	15
	1. <i>Where We Were Unwanted (Initially)</i>	15
	2. <i>But Ultimately Needed</i>	16
	3. <i>And Eventually Revered</i>	16
	4. <i>As Guests of the Court</i>	17
	5. <i>In Need of Guidance</i>	19

II. THE TEXAS DISCIPLINARY RULES OF PROFESSIONAL CONDUCT.....	22
A. Aspiration v. Prohibition.....	22
B. The Rules Before the Bar.....	23
1. <i>Rule 3.01, Meritorious Claims and Contentions</i>	23
2. <i>Rule 3.02, Minimizing the Burdens and Delays of Litigation</i>	24
3. <i>Rule 3.03, Candor Toward the Tribunal</i>	24
4. <i>Rule 3.04, Fairness in Adjudicatory Proceedings</i>	26
5. <i>Rule 3.05, Maintaining Impartiality of Tribunal</i>	28
6. <i>Rule 3.06, Maintaining Integrity of Jury System</i>	29
7. <i>Rule 3.07, Trial Publicity</i>	30
8. <i>Rule 3.08, Lawyer as Witness</i>	31
9. <i>Rule 3.09, Special Responsibilities of a Prosecutor</i>	33
10. <i>Rule 3.10, Advocate in Nonadjudicative Proceedings</i>	33
11. <i>Rule 8.04, Misconduct</i>	34
III. CONCLUSION.....	34

AN OFFICER OF THE COURT

I. A VERY BRIEF HISTORY OF LAW AND LAWYERS

A. Law Has Been Around Awhile

In the 24th century BCE, the Code of Urukagina was formed, making it the oldest known legal code. No longer preserved except through references in other works, it is credited as a set of reforms, abolishing the control of princes over the treasuries and properties of temples, the annexation of other's lands to the property of the temples, the exploitation of people by clerics, and the use of temple workers in the palace by the king, as well as setting appropriate prices for land and livestock and the restoration of certain rights of the people. Urukagina and the First Freedom in Human History, fanack (Apr. 2, 2021) <https://fanack.com/opinion/features-insights/urukagina-and-the-first-freedom-in-human-history~170144/> (last visited May 17, 2024).

Between 2,100 to 2050 BCE, the Code of Ur-Nammu, the ancient Sumerian ruler (2047 to 2030 BCE), was written, making it the oldest legal code of which we still have a (partial) copy. World History Encyclopedia, Code of Ur-Nammu, Joshua Mark, World History Encyclopedia (Oct. 26, 2021) https://www.worldhistory.org/Code_of_Ur-Nammu/ (last visited May 17, 2024). The Code positioned Ur-Nammu as the father of his people and his laws as the rules of his home. *Id.* Except for certain capital crimes, the laws were enforced via fines, with the understanding that monetary punishment alone would be sufficient to remind citizens how to treat one another. *Id.*

In or about 1930 BCE, The Code of Lipit-Ishtar was written, originating out of the city-state of Isin, located in modern-day Iraq. Lipit-Ishtar and the Obligation of Lagash, HIX.AI <https://essaygpt.hix.ai/essay/lipit-ishtar-and-the-obligation-of-lagash-6ec210> (last visited May 17, 2024). The Code of Lipit-Ishtar regulated property rights, inheritance, commerce, and family relations and proclaimed the need for fair judicial procedure:

In accordance with the true word of the god Utu, I made the lands of Sumer and Akkad hold fair judicial procedure. In accordance with the utterance of the god Enlil, I, Lipit-Ishtar, son of Enlil, eradicated enmity and violence. I made weeping, lamentation, shouts for justice, and suits taboo. I made right and truth shine forth.

...

Lipit-Ishtar Codex, Epilogue, Translated by Dalia Pokutta, Law Collections from Mesopotamia and Asia Minor <https://www.academia.edu/22455640> (last visited May 17, 2024).

Between 1792 to 1750 BCE, Hammurabi's Code was written, bringing with it the infamous punishment of "an eye for an eye." Ancient Civilizations, 4c. Hammurabi's Code: An Eye for an Eye <https://www.ushistory.org/civ/4c.asp> (last visited May 17, 2024). The Code itself is more complex than this memorable edict, however, containing both brutal ("3. If any one bring an accusation of any crime before the elders, and does not prove what he has charged, he shall, if it be a capital offense charged, be put to death.") and progressive ("48. If any one owe a debt for a loan, and a storm prostrates the grain, or the harvest fail, or the grain does not grow for lack of water; in that year he need not give his creditor any grain, he washes his debt-tablet in water and pays no rent for this year.") laws. The Code of Hammurabi, Translated by L.W. King, The Avalon

Project, Yale Law School, Lillian Goldman Law Library <https://avalon.law.yale.edu/ancient/hamframe.asp> (last visited May 17, 2024). As Hammurabi explained in the Code's prologue, his purpose in creating the Code was "to bring about the rule of righteousness in the land, to destroy the wicked and the evil-doers; so that the strong should not harm the weak; so that I should rule over the black-headed people like Shamash, and enlighten the land, to further the well-being of mankind." *Id.* In the Epilogue, Hammurabi echoed Lipit-Ishtar's call for (his vision of) the proper administration of justice:

In future time, through all coming generations, let the king, who may be in the land, observe the words of righteousness which I have written on my monument; let him not alter the law of the land which I have given, the edicts which I have enacted; my monument let him not mar. If such a ruler have wisdom, and be able to keep his land in order, he shall observe the words which I have written in this inscription; the rule, statute, and law of the land which I have given; the decisions which I have made will this inscription show him; let him rule his subjects accordingly, speak justice to them, give right decisions, root out the miscreants and criminals from this land, and grant prosperity to his subjects.

Id., Epilogue.

Finally, for purposes of this paper at least, came the Ten Commandments. The Ten Commandments have played an undeniable role in shaping modern law, a proper discussion of which would far exceed the scope and purpose of this paper. *See, e.g., Van Orden v. Perry*, 546 U.S. 677, 681, 686-690 (2005) (acknowledging the history and role of the Ten Commandments in the United States and Moses's status as a "lawgiver" in upholding the display of the Commandments outside the Texas State Capital among other historical markers commemorating the "people, ideals, and events that compose Texan identity."). Indeed, at least four of the commandments address near universal aspects of secular law in prohibiting murder, adultery, theft, and giving false testimony. Exodus 20:1-17; Deuteronomy 5:6-21. Further, the Old Testament more broadly addresses the appointment of fair judges, the need for truthful and just testimony, the need for sufficient evidence to convict an accused, the need to avoid lawsuits, and the role of the law in maintaining society. *See, e.g.,* Exodus 18:17-24, 23:1-9; Proverbs 17:23, 25:8-12; Matthew 18:16; 1 Corinthians 6:1-9; and Romans 13:1-6.

Dating the Ten Commandments depends in part on your particular view of the commandments themselves. If you believe the Ten Commandments were given to Moses on Mt. Sinai, then they were given sometime between the 16th and 13th century BCE, or earlier still if you believe the Ten Commandment were a distillation of religious and legal traditions already in use in Israel. Ten Commandments, Encyclopedia Britannica www.britannica.com/topic/Ten-Commandments (last visited May 25, 2024). If, on the other hand, you believe the Ten Commandments were not fully developed until the time of Amos and Hosea as the epitome of prophetic teachings, then they emerged sometime after 750 BCE. *Id.* In all instances, however, it seems they came sometime after Hammurabi's Code and sometime before the appearance of the first arguable lawyers in Athens.

Find the full text of this and thousands of other resources from leading experts in dozens of legal practice areas in the [UT Law CLE eLibrary \(utcle.org/elibrary\)](http://utcle.org/elibrary)

Title search: An Officer of the Court

Also available as part of the eCourse

[Ethics: Obligations of Attorneys as Officers of the Court](#)

First appeared as part of the conference materials for the
31st Annual Labor and Employment Law Conference session
"Ethics: Officer of the Court"