

My Mind's Got a Mind of Its Own: Why Even Good Lawyers Are Lured Into Unethical Behavior by the Way Their Brains Work

Kevin Dubose
ALEXANDER DUBOSE & JEFFERSON LLP

Copyright © 2018 Texas Center for Legal Ethics. All rights reserved.

LegalEthicsTexas.com

1

Jimmie Dale Gilmore, *My Mind's Got a Mind of Its Own*, on *After Awhile* (Elektra 1991).



2

Acknowledgements and Gratitude

Texas Center for Legal Ethics

Jonathan Smaby

Robert Prentice

Beverly Godbey



3

The Unexpected Phone Call

- Jury verdict for Plaintiffs
- Plaintiffs' proposed judgment overreaches
- Defendant tenders alternative judgment
- Judge *calls defense counsel* to:
 - ask counsel to modify alternative judgment
 - advise he will sign modified judgment
- Defense advises Plaintiff of Judge's call
- Plaintiff's counsel claims *ex parte* contact



4

Reactions

- “There’s nothing wrong with this, lawyers have these kinds of conversations with judges all the time.”
- “There’s nothing wrong with the judge’s clerk calling counsel and advising them of the judge’s ruling, and this is just a step removed from that.”
- “This isn’t an *ex parte* discussion about the merits, it’s just the judge advising you about his ruling.”



5

Reactions

- “What were you supposed to do, challenge and accuse of being unethical the very judge who is mostly ruling in your client’s favor?”
- “It’s not your fault, the judge is the one who initiated the conversation.”
- “It didn’t make any difference, the judge was going to rule the way that he ruled anyway.”



6

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 \(utcle.org/elibrary\)](https://utcle.org/elibrary)

Title search: My Mind Has A Mind of Its Own: Why Even Good Lawyers Are Lured Into Unethical Behavior by the Way Their Brains Work

Also available as part of the eCourse

[2024 eConference on State and Federal Appeals](#)

First appeared as part of the conference materials for the
34th Annual Conference on State and Federal Appeals session

"My Mind Has A Mind of Its Own: Why Even Good Lawyers Are Lured Into Unethical Behavior by the Way Their Brains Work"