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HERE, BUT FOR THE GRACE OF GOD, GO YOU

Why The Texas Lawyers Creed Matters to You

"This is not a game for the most well-adjusted people."
—Bill Parcells, NFL Hall of Fame Coach

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I. THE GENESIS OF THIS PAPER

Between April of 2014 and March of 2015, I suffered the deaths of three close family members and one of my best friends, triggering an episode of clinically diagnosed Depression. Being a solo practitioner, I had no formal safety net to help me continue to meet my clients' needs. But as the song goes, "*I get by with a little help from my friends.*" Unfortunately, not all of our colleagues are friendly and helpful. Some can be downright uncivil. This paper is my story of what I experienced personally and professionally as I struggled to meet my professional obligations, and the family obligations these deaths imposed on me, through my episode of Depression.

Two Adjudicatory Proceedings¹ in which I was involved during the last two deaths provide context for discussing our professional obligations. In one of these proceedings, opposing counsel was accommodating, while in the other, opposing counsel attempted to use my life circumstances to his client's benefit and my client's detriment. My hope is that, after reading this paper, you will feel more confident in advancing your clients' interests while simultaneously sympathizing with Impaired colleagues, and that my experience will encourage you to put your actions behind your sympathy, exercising client control as necessary to do so.

Just as a series of challenging life experiences far beyond my control happened to me, they can also happen to you, and at some point in your practice, they probably will. So here, but for the Grace of God, go you. And when bad things happen to you, you will prefer that your colleagues, whether partners, associates, opposing counsels, or judges, follow the *Texas Lawyers Creed*² (*Creed*) instead of using your impairment against you for tactical advantage, or even simply acting as though you have no impairment. Finally, I will encourage you to practice the Golden Rule by extending the courtesies of the *Creed* to your colleagues as needed, for the benefit not just to them, but for the entirety of our noble profession.

II. RELEVANT DEFINITIONS

Since this area of mental and emotional health is cluttered with important terms that have taken on multiple and very different definitions, it is necessary to begin with clear definitions for the terms I will use in this paper.

A. SELECTED DEFINITIONS FROM THE DRs

1. **Adjudicatory Official** denotes a person who serves on a Tribunal.
2. **Adjudicatory Proceeding** denotes the consideration of a matter by a Tribunal.
3. **Competent** or **Competence** denotes possession or the ability to timely acquire the legal knowledge, skill, and training reasonably necessary for the representation of the client.
4. **Fitness** denotes those qualities of physical, mental and psychological health that enable a person to discharge a lawyer's responsibilities to clients in conformity with the Texas Disciplinary Rules of Professional Conduct. Normally a lack of Fitness is indicated most clearly by a persistent inability to discharge, or unreliability in carrying out, significant obligations.
5. **Knowingly**, **Known** or **Knows** denotes actual knowledge of the fact in question. A person's

¹When possible and appropriate, I will use terms from the Texas Rules of Disciplinary Conduct, SUPREME COURT OF TEXAS, RULES GOVERNING THE STATE BAR OF TEXAS art. X, § 9 (Disciplinary Rules or DR).

²*The Texas Lawyers Creed: A Mandate for Professionalism*, accessed at <https://www.texasbar.com/AM/Template.cfm?Section=Ethics1&Template=/CM/ContentDisplay.cfm&ContentID=23485> on January 8, 2016

knowledge may be inferred from circumstances.

6. **Reasonable or Reasonably** when used in relation to conduct by a lawyer denotes the conduct of a reasonably prudent and competent lawyer.
7. **Reasonable belief** or **Reasonably believes** when used in reference to a lawyer denotes that the lawyer believes the matter in question and that the circumstances are such that the belief is reasonable.
8. **Should know** when used in reference to a lawyer denotes that a Reasonable lawyer under the same or similar circumstances would know the matter in question.
9. **Substantial** when used in reference to degree or extent denotes a matter of meaningful significance or involvement.
10. **Tribunal** denotes any governmental body or official or any other person engaged in a process of resolving a particular dispute or controversy. “Tribunal” includes such institutions as courts and administrative agencies when engaging in adjudicatory or licensing activities as defined by applicable law or rules of practice or procedure, as well as judges, magistrates, special masters, referees, arbitrators, mediators, hearing officers and comparable persons empowered to resolve or to recommend a resolution of a particular matter; but it does not include jurors, prospective jurors, legislative bodies or their committees, members or staffs, nor does it include other governmental bodies when acting in a legislative or rule-making capacity.

B. OTHER DEFINITIONS

1. **Depressed** or **Depression**: As used in this paper refers to clinical depression, meaning involuntary symptoms of sadness which are so severe and constant that they interfere with the person’s behavior, including the ability to work, sleep, study, eat, and enjoy life. There is objective truth to this definition, meaning that a person may be Depressed whether or not formally diagnosed by a medical doctor, just as someone may be an alcoholic regardless of a formal medical diagnosis.
2. **Impair, Impaired, or Impairment**: A lawyer whose behavior is affected by Depression, Mental Illness, neurological disease, e.g., strokes or dementia, or behavioral health disorder, e.g., alcohol or drug dependency.
3. **Mental illness**: a medical condition that disrupts a person’s thinking, feeling, mood, ability to relate to others, and daily functioning. It has nothing to do with character issues and is an involuntary state.
4. **Recovery**: A process of change through which individuals improve their health and wellness, live a self-directed life, and strive to reach their full potential.

III. REVIEWING THE RELEVANT DRs and CREED

A lawyer’s emotional and, in some instances, physical condition raises potential concerns within the purview of the DRs that are very different than those addressed by the majority of ethics papers. Here we are not concerned with traditional conflicts of interest, Competence, retainer agreements, client confidences or advertising. For purposes of this paper we can assume that all of those professional responsibilities have been met.

For both the DRs and Creed, the relevant inquiries are: *(1) what transgressions is a lawyer most likely to commit when practicing in an Impaired condition due to Depression; and (2) what should I do when I believe opposing counsel is Impaired due to Depression?* Perhaps not surprisingly, the DRs mostly answer

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