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The Ethics of Civility

Christopher Hahn
Vice President, Employment Law
Dell, Inc.
Austin, TX

Tom Nesbitt
DeShazo & Nesbitt L.L.P.
Austin, TX

Author contact information:

Christopher H. Hahn
Vice President, Employment Law
Dell, Inc.
(512) 723-3142
Christopher.Hahn@dell.com

Tom Nesbitt
DeShazo & Nesbitt LLP
809 West Avenue
Austin, Texas 78701
(512) 617-5560
tnesbitt@dnaustin.com
www.dnaustin.com

I. Introduction

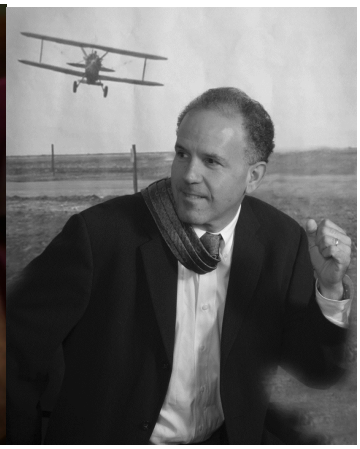
Our revered colleague, Phil Durst, passed away on October 1, 2019. He was only 62. Phil leaves a legacy of legal skill and expertise, humor, and art. He also leaves lessons he taught us through his actions, not his words, about the virtues and the effectiveness of practicing law with civility and decency.

Phil Durst was lawyer of the highest caliber. A 1982 graduate of the University of Texas School of Law, Phil was a civil rights and employment lawyer and a giant in the bar in Austin and statewide. As an adjunct professor at the UT Law School for 20 years he helped teach a generation of Texas lawyers. Phil helped plan this conference every year and almost always presented at this conference. He was an expert in his field and a highly effective courtroom advocate.

One of Phil's recurring presentations at this conference was his "What is it Worth" survey in which he created common hypothetical cases, distributed them to defense and plaintiff side attorneys, and asked us to value the case. What is it worth? He then presented the results, which were always illuminating. This exercise was just one of many ways Phil succeeded in bringing opposing viewpoints together and helping us understand each other. It also speaks to the trust that lawyers placed in Phil that defense lawyers – his frequent opponents – relied on Phil's integrity and his process of keeping their case values anonymous even concealing them from himself.

Phil supported and fought for causes like the Save Our Springs Alliance, the Texas Freedom Network, and the Equal Justice Center.

Phil had a sparkling sense of humor. Lawyers aren't typically funny. Phil Durst was world class funny. Every year his picture in the Austin Bar Association Directory was something ridiculous. Phil wearing a Mexican wrestler's mask. Phil acting out the famous scene from North By Northwest. Phil as George W. Bush on an aircraft carrier.



He refused to be introduced at this conference with a bland recitation of where he went to school and how many times he had been named a Super Lawyer. So he wrote his own introductions. They usually began like this, "Our next speaker insisted that I read the following statement." The joke was almost always on Phil. Here's the introduction Phil wrote for this conference last year, challenging the introducer's pronunciation – a gentle joking jab at the introducer:

> Our next speaker has insisted that I read the following statement:
>
> As many of you know, I am a big "list maker." I love making lists like my favorite Billie Eilish songs or the cutest members of BTS (I like J-Hope) So, the other day I was making a list of the world's coolest people and realized that with the death of Muhammad Ali, Philip Durst has moved up to be the 4th coolest person on earth, just behind:
>
> #1) Nice Nailantei Leng'ete (the Kenyan activist dedicated to promoting women's health and ending female circumcision)
>
> #2) Malala Yousafzai (the Pakistani advocate for women's education and the youngest winner of the Nobel Peace Prize)
>
> #3) Milwaukee Bucks's power forward Giannis Antetokounmpo; and then (#4) is Phil.
>
> My new list puts Phil ahead of Yemini Human Rights defender, Radhya Almutawakel; Indian LGBTQ+ lawyer Menaka Guruswamy; Loujain Al-Hathloul of Saudi Arabia, Meghan Markle, and Millie Bobby Brown from Stranger Things.
>
> And so, then it hit me: Oh my gosh! Emit high pitched scream. Philip Durst is the fourth coolest person on earth! And I know him.
>
> Please welcome "#4": Phil Durst

Phil used his sense of humor in the courtroom. In one of Phil's last hearings in December 2018 involving three parties and several motions, it was not clear who would go first. So Phil simply stood up and announced to the Court, "Your honor, since I am the most handsome, I'll go first."

Phil's business card bragged that his office was air conditioned.

Phil wrote a eulogy to be read at his own funeral. It was quintessentially Phil: hilarious and uplifting. It ended with Phil urging those in attendance to stand and dance while "I'm a Believer" by The Monkees was played over the synagogue's sound system.

Phil was an artist. You probably have memories of Phil sitting around a conference table or in the audience at this annual event, appearing to knit or sew or crumble paper or tie things with string or cut with scissors. He was creating his beautiful collage art out of Starbucks cups or old law school book pages or Dum Dum wrappers.

Phil said of his collage art:

> As quilts were traditionally made with scraps and left-over fabrics, I like to work with materials that have also been cast-off or designed for other purposes. I enjoy working with paint chips, old books, candy boxes, and other packaging that all have such beauty even though they were never designed to last. Such a tremendous amount of artistic talent, choice, and color goes into such ephemeral packaging that I like to preserve their beauty and vibrance.

There would be many reasons to strive to emulate Phil Durst. But probably his greatest trait was the civility Phil showed even in the heat of conflict. Phil was unfailingly courteous in a profession where it is hard to be so. Perhaps Phil was so confident in his superb legal skill that he simply did not need the crutch of even occasional incivility. Maybe something about his natural, self-deprecating humor immunized Phil from pettiness. Or maybe he saw and respected opposing counsel and adverse parties the way he saw beauty in cast-off scraps of paper and cardboard.

Whatever its source, Phil Durst's great civility made him a better lawyer. Phil was never preachy. Phil never cited rules at opposing counsel. But by his example Phil modeled the highest behavior and made all of us better lawyers.

In this paper, we will do what Phil would not have done: we set out some of the rules and formal aspirational goals of our profession related to civility. That's so we can all get some CLE ethics credit. Phil would want us to get some CLE ethics credit. We also tell a few nightmare stories in reported cases of lawyers behaving badly and being punished for it – either monetarily or by the shame associated with such behavior. But we provide this paper mainly as a resource for later use and hope that our presentation will focus on remembering a great lawyer and friend and trying to reinforce in our memories the lessons he tried to teach us through his actions about the virtues and the effectiveness of practicing law with civility.

II. Monetary Sanctions and Reputational Harm for Uncivil Conduct.

A. Lawyers Can Be Sanctioned for Uncivil Conduct

It would have never entered Phil Durst's mind to behave in a way that was sanctionable. But we mortal lawyers are reminded that incivility can lead to sanctions against lawyers and law firms.

Just by way of example, 28 U.S.C. §1927 provides that an attorney who "so multiplies the proceedings in any case unreasonably and vexatiously may be required by the court to satisfy personally the excess costs, expenses and attorneys' fees reasonably incurred because of such conduct." A court can sanction a lawyer for violating a court order compelling discovery. Fed. R. Civ. P. 3. A court can sanction a lawyer for submitting affidavits in bad faith. Fed. R. Civ. P. 56(h).

60 E. 80th St. Equities, Inc. v. Sapir, 218 F.3d 109 (2nd Cir. 2000).

A good example of uncivil conduct that led to a lawyer being sanctioned is *60 E. 80th St. Equities, Inc. v. Sapir*, 218 F.3d 109 (2nd Cir. 2000). There, the 2nd Circuit affirmed an award of sanctions the district court levied against an attorney under 28 U.S.C. §1927 and also sanctioned the attorney for his conduct during the appeal.

In written briefs to the federal district court, the lawyer disparaged and made unsubstantiated allegations that the Bankruptcy Court and the Trustee were engaged in civil and criminal misconduct. *Id.*at 114. Specifically, the lawyer:

- Accused the Bankruptcy Court of colluding with the Trustee, alleging that the Trustee had "the helping hand of an approvingly winking Bankruptcy Court."
- Claimed that that the Bankruptcy Court's actions constituted "impermissible advocacy of a litigant's cause by a Court of Law."

- Claimed that the Bankruptcy Court applied "double standards."

- Referred to the Bankruptcy Court's decision as "utterly absurd" and claimed it "transcend[ed] the bounds of an ordinary error, as evincing [] fundamental ignorance."

- Referred to the underlying bankruptcy sale of his client's (the debtor's) property as "judicially sanctioned grand larceny."

- Accused the Trustee of "fraud, deceit and misrepresentation."

- Referred to an adverse party's management as "crooks" whose "cynicism and arrogance" was boundless.

- Referred to the Trustee and an adverse party as "thieves and liars acting in concert with thieves and liars under the approving nod of a sympathetic court." *Id.*

Under questioning by the judge in a hearing over sanctions, the lawyer defended his actions but apologized for "the inconvenience" the matter caused the Court. The judge responded, "This isn't a case of inconvenience to me, it's a disgrace to you and the profession." *Id.*

After the judge sanctioned the lawyer $5,000, the lawyer appealed the sanction to the 2nd Circuit. In his brief, the lawyer kept digging, now accusing the district court of engaging in "a judicial fraud designed to whitewash the actions of the Trustee and the Bankruptcy Court." *Id.* at 115. He asserted that the district court did not merely make errors, but rather "perpetrated a judicial fraud on the Appellants in a disgraceful violation of its constitutional oaths and its pledge to uphold the laws of the United States and act as an impartial arbiter in the adjudication of any controversy before it." *Id.* The lawyer argued in his brief that, "nobody can insult a friendly acquaintance: never mind the latter's collusive theft of estate assets." *Id.* He referred to the district court's findings of fact and conclusions of law as "pure inventions" and "fabrications" and accused the district court of making "conscious falsehoods" and of imposing sanctions as an "*ad terrorem* tactic designed to exact retribution for the denouncement of the proteges of the District Court." *Id*. Finally, he accused the district judge by name of being a "disgrace" to the judiciary because he "perpetrated a judicial fraud on a litigant by inventing grounds to deny its appeal, testified as an unsworn witness and abused counsel for living up to his ethical obligations to his client."

In affirming the sanctions, the 2nd Circuit emphasized that the conduct of the lawyer was strong evidence of bad faith. *Id.* at 116-17 ("[The lawyer]'s bad faith and vexatiousness are most evident, however, in the nature of his arguments to the District Court, in which he disparaged and made unsubstantiated allegations impugning the integrity of the Bankruptcy Court Judge and the Trustee – claims which had absolutely nothing to do with the merits of his case…. Thus, bad faith here may be inferred from the clear lack of merit of the claims… and the numerous attempts to impugn the integrity of a federal judge and fellow attorney through totally unsubstantiated abusive and slanderous statements.") The 2nd Circuit also sanctioned the lawyer for the frivolous argument pursued on appeal. *Id.* at 120.

***Cook v. Am. S.S. Co.*, 134 F.3d 771 (6th Cir. 1998)**

It has been said, "Never hit anyone in anger unless you're absolutely sure you can get away with it."1 The case of *Cook v. Am. S.S. Co.*, 134 F.3d 771 (6th Cir. 1998) stands for the proposition that you probably can't hit opposing counsel in the courtroom and get away with it.

In *Cook v. Am. S.S. Co,* two lawyers got into a physical altercation in the courtroom after trial proceedings had wrapped up for the day. *Id.* The altercation led to a mistrial, and the trial court sanctioned the lawyer it found responsible by ordering the lawyer to pay the opposing party's costs, expenses and attorneys' fees for the time spent preparing for and participating in the trial. *Id.* at 773-74. In affirming the trial court's sanction of the lawyer, the Sixth Circuit said that the lawyer's conduct "was deplorable and fell short of the behavior and demeanor expected of a member of the bar. His actions were unreasonable and caused additional expense to the opposing party. Therefore, the lower court did not abuse its discretion in determining that [the lawyer] acted without justification in laying his hands on [the other lawyer." *Id.* at 777.

***White v. Regional Adjustment Bureau*, 2015 U.S. Dist. LEXIS 186329 (N.D. Tex. 2015)**

In *White v. Regional Adjustment Bureau*, 2015 U.S. Dist. LEXIS 186329 (N.D. Tex. 2015) the trial court sanctioned two lawyers under 28 U.S.C. §1927, Fed. R. Civ. P. 37, and the court's inherent powers for a variety of uncivil and dishonest conduct. The lawyers were ordered to pay one third of the attorneys and paralegal fees incurred by the opposing party in a case that went to verdict in federal court, the fees incurred for work associated with four days of a sanctions hearing, and ordered that the lawyers be suspended from the practice of law for three years. *Id.* The Fifth Circuit vacated the suspension for one of the lawyers, reduced the fees owed by that lawyer, and cut the primary lawyer's suspension back to one year, but otherwise affirmed the severe and costly sanctions. *White v. Regional Adjustment Bureau, Inc*, 641 Fed. Appx. 298 (5th Cir. 2015); *Wyhite v. Regional Adjustment Bureau*, 647 Fed. Appx. 410 (5th Cir. 2016).

In summarizing the conduct of the main lawyer whose conduct was at issue, the trial court wrote:

> [The lawyer's] conduct at the pretrial and trial, from the Court's first-hand observation, appeared to be that of an arrogant, yet surprisingly short-on-experience and unprepared representative for his client. He displayed a woefully inadequate understanding of basic pretrial procedures on such issues as timely designating witnesses, the components of a proper opening statements and even the need to provide marked exhibits to the Court and co-counsel. More importantly, during trial, he elicited testimony (about actual damages and counseling efforts from his client) that he had never disclosed to [the opposing party] despite [the opposing party]'s proper discovery requests for the information. This unexpected testimony was highly disconcerting to [the opposing party], having gone to extensive efforts to prepare for trial based on the discovery and disclosures it received from [the lawyer].

1 *Stripes* (1981)("I've always been kind of a pacifist. When I was a kid, my father told me, 'Never hit anyone in anger unless you're absolutely sure you can get away with it.' I don't know what kind of soldier I'm going to make. But I want you guys to know that if we ever get into real heavy combat, I'll be right behind you guys every step of the way.")

> By far the most egregious and disappointing aspect of [the lawyer]'s trial conduct was his willingness to mislead the Court and counsel. Indeed…replete throughout the record, is example after example of [the attorney's] seemingly ingrained practice of prevarication and misrepresentation. It was this practice that tainted the entire trial and obstructed the truth-seeking function of the Court.

B. Bad Behavior Can Go Viral

> **"About half of the practice of a decent lawyer is telling would-be clients that they are damned fools and should stop."**

Monetary sanctions for bad behavior might be the least a lawyer's concerns. On March 18, 2020, as the COVID-19 pandemic was shutting down almost our entire way of life, Judge Steven Seeger of the U.S. District Court for the Northern District of Illinois issued an order denying a plaintiff's motion to reconsider the Judge's prior ruling delaying a TRO hearing by "a few weeks." In the process, Judge Seeger taught us all a valuable lesson about priorities, civility, and the importance of speaking truth to our clients. *Art Ask Agency v. The Individuals, et. al.*, Case No. 20-cv-1666 (Dkt #27, p.1). The order went viral.

Judge Seeger began his order by juxtaposing the issue before the court – a plaintiff seeking a TRO in a trademark dispute over drawings of unicorns and elves – with the unfolding national emergency. The Court's order began as follows:

ORDER

This case involves counterfeit unicorn drawings. The complaint includes a few examples of products that allegedly infringe Plaintiff's trademarks, which offer "striking designs and life-like portrayals of fantasy subjects." *See* Cplt. at ¶ 7 (Dckt. No. 1). One example is a puzzle of an elf-like creature embracing the head of a unicorn on a beach. *Id.* at p.4. Another is a hand purse with a large purple heart, filled with the interlocking heads of two amorous-looking unicorns. *Id.* There are phone cases featuring elves and unicorns, and a unicorn running beneath a castle lit by a full moon. *Id.*

Meanwhile, the world is in the midst of a global pandemic. The President has declared a national emergency. The Governor has issued a state-wide health emergency. As things stand, the government has forced all restaurants and bars in Chicago to shut their doors, and the schools are closed, too. The government has encouraged everyone to stay home, to keep infections to a minimum and help contain the fast-developing public health emergency.

Judge Seeger then explained that he had earlier moved the TRO hearing because "This Court thought it was a bad time to hold a hearing on this motion," and "to protect the health and safety of our community, including counsel and this Court's staff." *Id.* at pp. 1-2. Noting that Plaintiff has not demonstrated it will suffer irreparable injury from having to wait a few weeks, the Court asked rhetorically, "One wonders if the fake fantasy products are experiencing brisk sales at the moment." *Id.* at p. 2.

Judge Seeger then described the motion before the Court: plaintiff's motion asking the Court to reconsider the rescheduling of the TRO hearing. Judge Seeger wrote:

> In response, Plaintiff Art Ask Agency and its counsel filed a motion for reconsideration. *See* Dckt. No. 20. They ask this Court to re-think its scheduling order. They want a hearing this week (telephonically if need be).
>
> Plaintiff recognizes that the community is in the midst of a "coronavirus pandemic." *Id.* at ¶ 3. But Plaintiff argues that it will suffer an "irreparable injury" if this Court does not hold a hearing this week and immediately put a stop to the infringing unicorns and the knock-off elves. *Id.* at ¶ 4. To top it off, Plaintiff noticed the motion for a hearing on March 19, 2020, a day that has been blocked off on the Court's calendar – as revealed on its webpage – for several weeks. *See www.ilnd.uscourts.gov* (last visited March 16, 2020) ("The Honorable Steven C. Seeger will not be holding court on Thursday, March 19, 2020 . . . .").

But that wasn't all. The Court wrote that, thirty minutes earlier, the Court learned that the plaintiff had filed another emergency motion and "teed it up in front of the designated emergency judge, and thus consumed the attention of the Chief Judge." *Id.* Here is how Judge Seeger delivered his ruling:

> The filing calls to mind the sage words of Elihu Root: "About half of the practice of a decent lawyer is telling would-be clients that they are damned fools and should stop." *See Hill v. Norfolk and Western Railway Co.*, 814 F.2d 1192, 1202 (7th Cir. 1987) (quoting 1 Jessup, Elihu Root 133 (1938)).
>
> The world is facing a real emergency. Plaintiff is not. The motion to reconsider the scheduling order is denied.
>
> Steven C. Seeger
> United States District Judge

III. Other Ethical Rules Bearing on Civility.

A. Rules 4.01 and 4.1 – Be Honest

Even when lawyers are not in court, lawyers have a duty of honesty. Rule 4.01 of the Texas Disciplinary Rules of Professional Conduct states:

> In the course of representing a client a lawyer shall not knowingly:
>
> (a) make a false statement of material fact or law to a third person; or
>
> (b) fail to disclose a material fact to a third person when disclosure is necessary to avoid making the lawyer a party to a criminal act or knowingly assisting a fraudulent act perpetrated by a client.

The American Bar Association Model Rule is similar. Rule 4.1 is identical to the Texas rule except that it concludes with: "disclosure is necessary to avoid assisting a criminal or fraudulent act by a client, unless disclosure is prohibited by Rule 1.6."

Comment 1 to the Texas Rules makes clear that whether a statement is "material" depends on the circumstances. Matters of opinion (such as estimates of price or value) are usually

regarded as conjecture are therefore are not to be taken as material facts. Statements about a party's intention in a negotiation are likewise not likely to be taken as statements of material fact due to generally accepted conventions in negotiations.

Comment 2 to the Texas Rules clarifies that, to violate this rule, a lawyer must know the statement is false and intend thereby to mislead.

In reference to subsection (b) of the Texas rule, Comment 3 states that "Generally, in the course of representing a client a lawyer has no duty to inform a third person of relevant or material facts, except as required by law or by applicable rules of practice or procedure, such as formal discovery." However, the lawyer "must not allow fidelity to a client to become a vehicle for a criminal act or fraud being perpetrated by that client." The ABA Model Rules contain similar comments.

B. Fed. R. Civ. P. 11 – Not Filing Pleadings for an Improper Purpose

Fed. R. Civ. P. 11(b) states that, by presenting to the court a pleading, written motion, or other paper --- whether by signing, filing, submitting, or later advocating it, an attorney certifies that, to the best of his or her knowledge, information and belief, formed after an inquiry reasonable under the circumstances, it is "not being presented for any improper purpose, such as to harass, cause unnecessary delay, or needlessly increase the cost of litigation."

In *Whitehead v. Food Max. of Miss., Inc.*, 332 F.3d 796 (5th Cir. 2003)(en banc), the Fifth Circuit affirmed Rule 11 sanctions against a lawyer based in part on his requesting a writ of execution which he then used to stage a media event in which television cameras followed him, along with U.S. Marshals, into a K-Mart store to prematurely attempt to execute on the judgment. The Fifth Circuit noted that generally district courts do not sanction attorneys who make non-frivolous representations, but may do so where it is "objectively ascertainable that an attorney submitted a paper to the court for an improper purpose." *Id.* At 805. The Court wrote that a court may sanction an attorney for presenting a paper to the court for any improper purpose, including to harass, that a court should not read an ulterior motive into a document "well grounded in fact and law," but may do so in "exceptional cases" where an improper purpose is objectively ascertainable. *Id.*

The facts in *Whitehead* were definitely exceptional. In May 1997, the district court entered a $3.4 million judgment against Kmart over a horrific abduction of a mother and child by an individual not associated with Kmart in a Kmart parking lot and the subsequent rape of the mother. At the trial, the lawyer had been sanctioned for violating the Court's orders. In June 1997, Kmart moved for a remittitur or, alternatively, a new trial and requested a stay of execution of judgment pending resolution of those post-trial motions. That stay motion was not decided, however, until August 18. Three days later the attorney obtained from the district clerk's office a writ of execution for the judgment, alerted the media that he was about to attempt execution, and then went to a local Kmart store with media and two United States Marshals and attempted to execute the judgment by seizing currency in the cash registers and vault. While at the Kmart, the attorney staged a press conference, telling the media, in what the court called "extremely hyperbolic, intemperate, and misleading" fashion, that Kmart's actions were "arrogant" and "outrageous." He stated that Kmart "would not pay" the judgment." He claimed Kmart had been "warned" before the abduction that an event like that was going to happen" but that Kmart did not care. He told the media that his clients had been "victimized" twice by Kmart -- once by being abducted there and once by Kmart's "not paying … a just debt."

Under these circumstances, and taking into account that the attempt to execute violated Mississippi state law, the Fifth Circuit affirmed the sanctions. *Id.* at 805-06. The Fifth Circuit noted that the lawyer did not even dispute that he intended to embarrass Kmart or that he was seeking personal recognition. *Id.* at 807.

C. Rules 8.02 and 8.2 -- Don't Throw the Judge Under the Bus

In the area of "do we really need a rule to tell us this is a terrible idea," the Texas Rules (8.02) and the ABA Model Rules (8.2) prohibit lawyers from making statements that the lawyer knows to be false or with reckless disregard as to its truth or falsity concerning the qualifications or integrity of a judge, adjudicatory official or public legal officer, or of a candidate for election or appointment to judicial or legal office.

IV. The Lawyer's Creed

Issued on November 7, 1989, The Texas Lawyer's Creed – A Mandate for Professionalism arose out of a concern over aggressive, uncivil, petty behavior in the practice of law. Issued by the Texas Supreme Court's special Advisory Committee on Professionalism, the Lawyers Creed "was intended to encourage lawyers to be mindful that abusive tactics – ranging from hostility to obstructionism – do not serve the justice we pursue." *PNS Stores, Inc. v. Rivera*, 379 S.W.3d 267, 276-77 (Tex. 2012). The Creed is aspirational. *Id.* It does not create new duties and obligations enforceable by the courts beyond those existing as a result of (1) courts' inherent powers and (2) the rules already in existence." *Id.*

The Creed begins:

> I am a lawyer. I am entrusted by the People of Texas to preserve and improve our legal system. I am licensed by the Supreme Court of Texas. I must therefore abide by the Texas Disciplinary Rules of Professional Conduct, but I know that professionalism requires more than merely avoiding the violation of laws and rules. I am committed to this creed for no other reason than it is right.

Numerous provisions of the Lawyer's Creed bear directly on civility. Section I, titled "Our Legal System," states,

> A lawyer owes to the administration of justice personal dignity, integrity, and independence. A lawyer should always adhere to the highest principles of professionalism.
>
> 1. I am passionately proud of my profession. Therefore, "My word is my bond."
> 2. I am responsible to assure that all persons have access to competent representation regardless of wealth or position in life.
> 3. I commit myself to an adequate and effective pro bono program.
> 4. I am obligated to educate my clients, the public, and other lawyers regarding the spirit and letter of this Creed.
> 5. I will always be conscious of my duty to the judicial system.

Section II deals with dealings among lawyers and provides in relevant part:

1 I will be courteous, civil, and prompt in oral and written communications.

3 I will identify for other counsel or parties all changes I have made in documents submitted for review.

4 I will attempt to prepare documents which correctly reflect the agreement of the parties. I will not include provisions which have not been agreed upon or omit provisions which are necessary to reflect the agreement of the parties.

6 I will agree to reasonable requests for extensions of time and for waiver of procedural formalities, provided legitimate objectives of my client will not be adversely affected.

9 I can disagree without being disagreeable. I recognize that effective representation does not require antagonistic or obnoxious behavior. I will neither encourage nor knowingly permit my client or anyone under my control to do anything which would be unethical or improper if done by me.

10 I will not, without good cause, attribute bad motives or unethical conduct to opposing counsel nor bring the profession into disrepute by unfounded accusations of impropriety. I will avoid disparaging personal remarks or acrimony towards opposing counsel, parties and witnesses. I will not be influenced by any ill feeling between clients. I will abstain from any allusion to personal peculiarities or idiosyncrasies of opposing counsel.

16 I will refrain from excessive and abusive discovery.

17 I will comply with all reasonable discovery requests. I will not resist discovery requests which are not objectionable. I will not make objections nor give instructions to a witness for the purpose of delaying or obstructing the discovery process. I will encourage witnesses to respond to all deposition questions which are reasonably understandable. I will neither encourage nor permit my witness to quibble about words where their meaning is reasonably clear.

V. Conclusion

Phil Durst did not preach these values to us or teach us these rules. He lived them. We learned them from him by example. We learned, and we should not forget, that humility and courtesy and seeking common ground were indicators of Phil's great ability and confidence. They were the hallmarks of good and effective lawyering.