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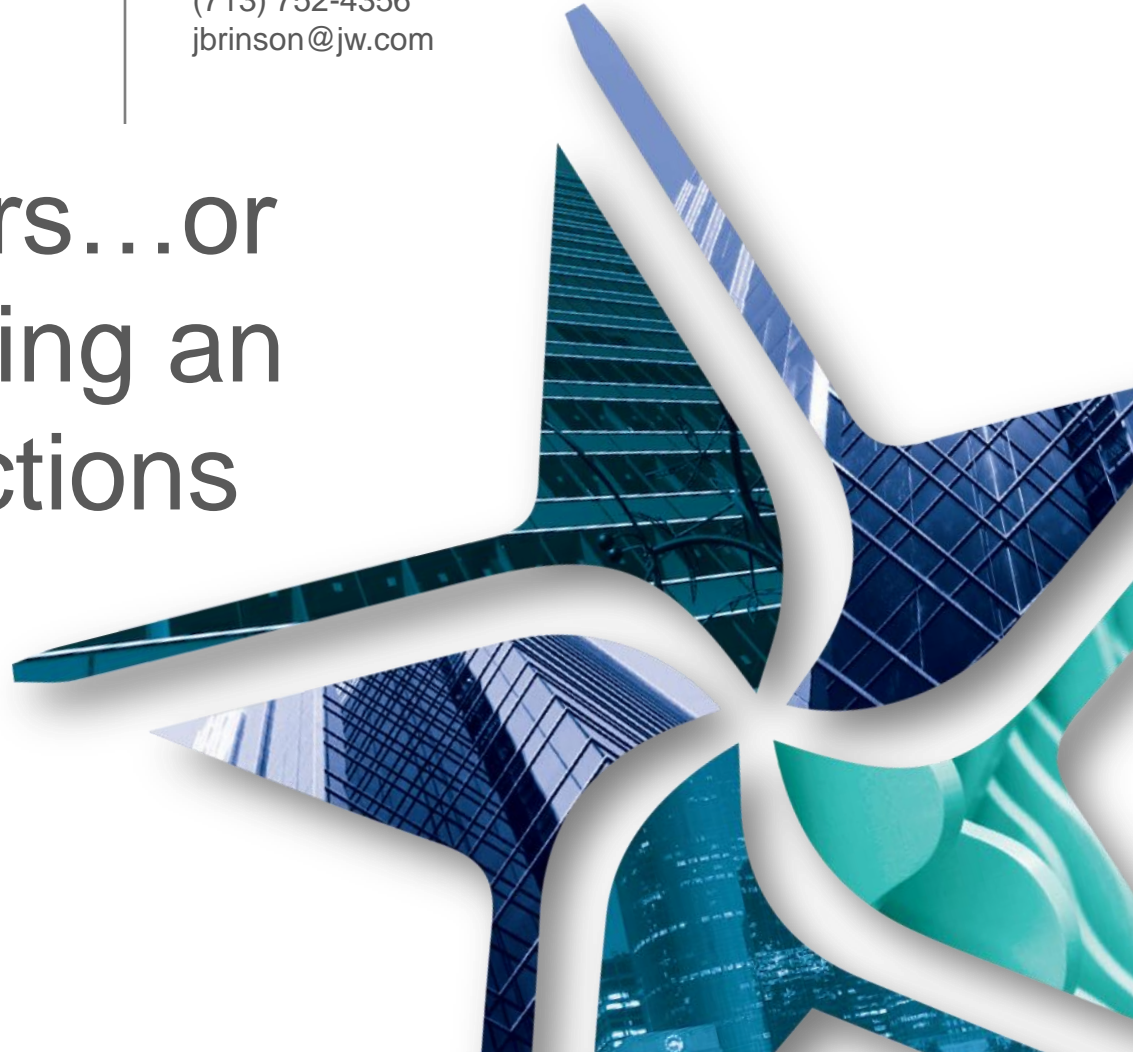
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Do Unto Others...or Else: Maintaining an Ethical Collections Practice

DISCLAIMER:

This is not intended nor should it be used as a substitute for legal advice or opinion, which can be rendered only when related to specific fact situations.





Debt Collection Practice...



- (Almost) everyone owes a debt
- Potential clients everywhere
- Economy-proof practice
- You serve a Need





Debt Collection Attorneys...

- Eliminate client's legal risk in collecting a debt
- Increase client's odds of collecting delinquent debts
- Offer debt collection services to fit each business model
- Maintain thorough documentation
- Accelerate the payment process & help clients get paid faster



Debt Collectors have a Bad Rap



NO. 2011-40626

STATE OF TEXAS,

Plaintiff

v.

MIDLAND FUNDING LLC,
MIDLAND CREDIT MANAGEMENT, INC.,
And ENCORE CAPITAL GROUP, INC.,

Defendants

IN THE DISTRICT COURT OF

HARRIS COUNTY, TEXAS

165th JUDICIAL DISTRICT

P17
10
ATFEX

AGREED FINAL JUDGMENT

- ☐ Pay State of Texas \$580k
- ☐ Issue \$500 credit to outstanding balance of each defendant
- ☐ Contact credit reporting bureaus
- ☐ Cease pending lawsuits filed after expiration of limitations period

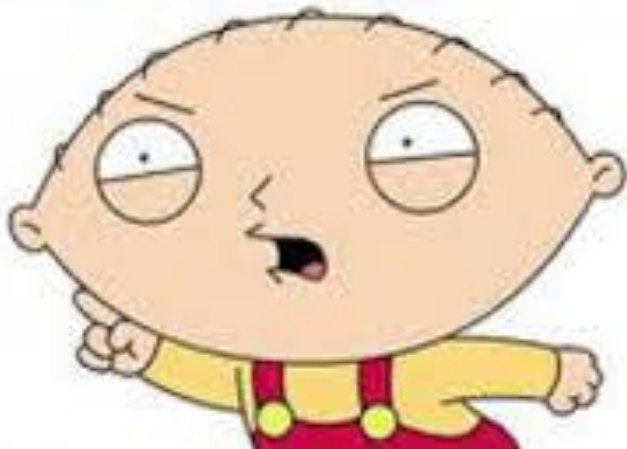




Debt Collection...

Legal,
Efficient &
Ethical
debt
collection
adds value

WHERE IS MY MONEY MAN?!!
WHERE IS MY MONEY?!





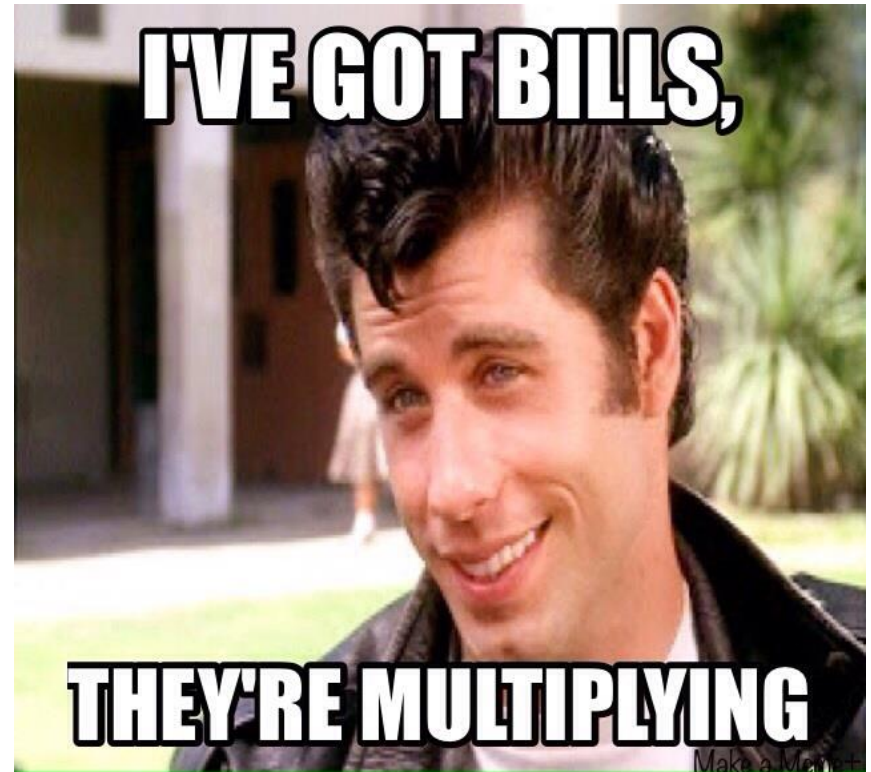
Goals of this Seminar

- Review relevant rules of ethics
- Offer practical advice on the ethical practice of debt collection
- Provide practical strategies for a successful collections practice



(3) Types of Debtors

- Want to pay but in financial difficulty
- Will pay but delay payment as part of budgeting
- Avoid payments as standard practice/don't want to pay



Typical Creditor



- Relationship with debtor ended on a sour note
- No ifs, ands, or buts...the debt is due
- Wants payment yesterday (no matter the cost...until they get your bill)



Approach NOT to Take

- Allow your client's urgency to cloud your professional vision
- Attempt to collect on a debt without documentation
- Bully, harass or threaten your way to payment



Relevant Laws/Rules



- Federal Fair Debt Collection Practices Act (FDCPA)
- Texas Debt Collection Act (TDCA)
- Texas Deceptive Trade Practices/Consumer Protection Act (DTPA)
- **Texas Disciplinary Rules of Professional Conduct**





Great Resources:

- **Detailed Overview of Collections Process**
 - Donna Brown, Donna Brown, P.C.
 - **“Anatomy of the Collections Process: An Overview with Efficiency Tips from a Seasoned Collections Lawyer”**
- **Collections under FDCPA or TDCA**
 - Newburger and Barron, **Fair Debt Collection Practices: Federal and State Law Regulation** (Sheshunoff & Pratt 2002)





Other Great Resources:

- **Texas Collections Manual (TexasBarBooks)**
- **TexasBarCLE's Collections and Creditors' Rights CLE (annual)**
- **Consumer Debt Collection/Texas AG's Office:** <https://texasattorneygeneral.gov/cpd/debt-collection>
- **Federal Trade Commission (FDCPA):** <https://www.consumer.ftc.gov/articles/0149-debt-collection>





Texas Disciplinary Rules of Professional Conduct

- Do NOT give raise to private cause of action
- Rules of Reason
- Govern Texas attorney discipline system

TEXAS DISCIPLINARY RULES OF PROFESSIONAL CONDUCT	
Table of Contents	
	Page
Preamble: A Lawyer's Responsibilities	i
Statutory Scope	ii
Terminology	iii
II. CLIENT-LAWYER RELATIONSHIP	
1.01 Unemployment and Dispute Representation	1
1.02 Scope and Operation of Representation	4
1.03 Communication	12
1.04 Fees	15
1.05 Confidentiality of Information	20
1.06 Conflicts of Interest: General Rule	19
1.07 Conflicts of Interest: Simultaneous	20
1.08 Conflicts of Interest: Discontinued Transactions	21
1.09 Conflicts of Interest: Future Effect	22
1.10 Successor Counselors and Prior Employment	28
1.11 Adversely Affecting or Infringing	40
1.12 Unprofessional Conduct	44
1.13 Conflicts: Public Interest Advocacy	45
1.14 Publishing Disclosures	46
1.15 Checking or Forwarding Representations	47
III. COUNSELOR	
1.16 Advice	49
1.17 Discretionary Use of Third Parties	51
IV. ADVOCATE	
1.18 Maintaining Client Confidentiality	52
1.19 Maintaining the Bar and Public of Lawyers	53
1.20 Conduct Towards the Tribunal	54
1.21 Referring to Adversely Affecting	55
1.22 Maintaining Integrity of the Bar	56
1.23 Maintaining Integrity of the System	57





Texas Disciplinary Rules of Professional Conduct-- Client

#1 Client Complaint

On January 6, 2016, Attorney X, 43, of San Antonio, accepted a three-month fully probated suspension effective March 1, 2016. The District 10 Grievance Committee found that Hayes neglected a client matter, failed to promptly comply with reasonable requests for information, and failed to refund unearned fees.

Hayes violated Rules 1.01(b)(1), 1.03(a), and 1.15(d). He was ordered to pay \$1,500 in restitution and \$800 in attorneys' fees.

SUSPENSIONS

On January 11, 2016, Attorney Y, 48, of Fort Worth, received a two-year fully probated suspension effective February 1, 2016. In November 2009, complainants hired Almon in a personal injury matter. Almon neglected the legal matter entrusted to him, failed to keep the complainants informed of the status of their case, and engaged in conduct involving misrepresentation.

Almon violated Rules 1.01(b)(1), 1.03(b), and 8.04(a)(3). He was ordered to pay \$950 in restitution and \$1,232 in attorneys' fees and direct expenses.





Texas Disciplinary Rules of Professional Conduct-- Clients

I. CLIENT-LAWYER RELATIONSHIP

Rule 1.01. Competent and Diligent Representation

(a) A lawyer shall not accept or continue employment in a legal matter which the lawyer knows or should know is beyond the lawyer's competence, unless:

- (1) another lawyer who is competent to handle the matter is, with the prior informed consent of the client, associated in the matter; or
- (2) the advice or assistance of the lawyer is reasonably required in an emergency and the lawyer limits the advice and assistance to that which is reasonably necessary in the circumstances.

(b) In representing a client, a lawyer shall not:

- (1) neglect a legal matter entrusted to the lawyer; or
- (2) frequently fail to carry out completely the obligations that the lawyer owes to a client or clients.

(c) As used in this Rule, "neglect" signifies inattentiveness involving a conscious disregard for the responsibilities owed to a client or clients.





Texas Disciplinary Rules of Professional Conduct-- Clients

Rule 1.03. Communication

- (a) A lawyer shall keep a client reasonably informed about the status of a matter and promptly comply with reasonable requests for information.
- (b) A lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation.





Texas Disciplinary Rules of Professional Conduct-- Clients

Your #1 Priority = Client

- Provide copy of all documents
- Respond to telephone calls & email promptly
- One-minute email updates
 - Events unfold
 - Delays pop up
- Send detailed & accurate invoices
- Document client communications/Paper the file





Texas Disciplinary Rules of Professional Conduct-- Debtors

On January 14, 2016, Attorney Z [#24010124], 43, of Kingsville, accepted a four-month fully probated suspension effective February 1, 2016. The District 11 Grievance Committee found that Isassi communicated about the subject matter of the representation with someone represented by counsel.

Isassi violated Rule 4.02(a) and was ordered to pay \$800 in attorneys' fees and direct expenses.





Texas Disciplinary Rules of Professional Conduct-- Debtors

Rule 4.02. Communication with One Represented by Counsel

(a) In representing a client, a lawyer shall not communicate or cause or encourage another to communicate about the subject of the representation with a person, organization or entity of government the lawyer knows to be represented by another lawyer regarding that subject, unless the lawyer has the consent of the other lawyer or is authorized by law to do so.





Texas Disciplinary Rules of Professional Conduct-- Debtors

Collection Letters:

- DO NOT let your clients use your letterhead to send collection letters
- NO misleading or deceptive statements
- DO NOT advise debtor on the law
- NO detailed warning about future court processes or attorneys' fees & court costs





Texas Disciplinary Rules of Professional Conduct-- Debtors

IV. NON-CLIENT RELATIONSHIPS

Rule 4.01. Truthfulness in Statements to Others

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

Rule 4.04. Respect for Rights of Third Persons

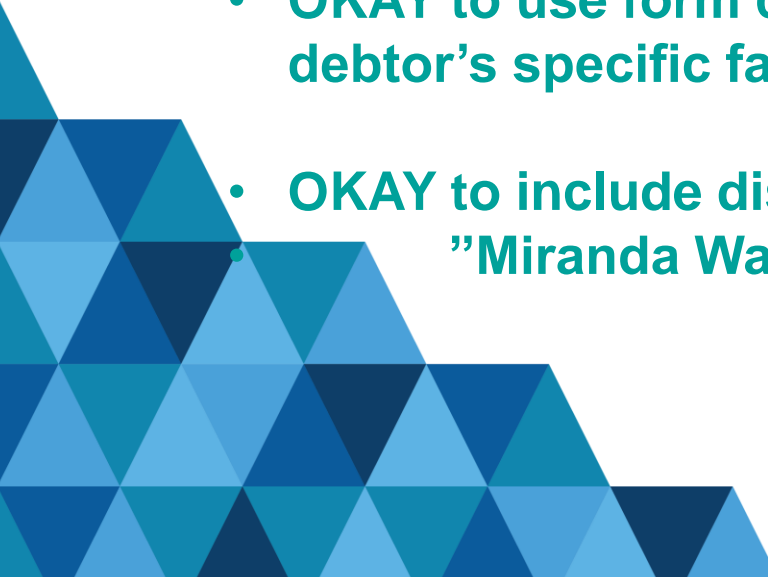
- (a) In representing a client, a lawyer shall not use means that have no substantial purpose other than to embarrass, delay, or burden a third person, or use methods of obtaining evidence that violate the legal rights of such a person.





Texas Disciplinary Rules of Professional Conduct

Collection Letters (cont'd):

- OKAY to offer to settle for stated sum but include copy of petition/state will file suit
 - OKAY to request debtor to dispute debt in writing
 - OKAY to use form collection letter BUT tailored to debtor's specific facts
 - OKAY to include disclaimer re: communications –
 - "Miranda Warning"
- 





Texas Disciplinary Rules of Professional Conduct— Client Funds

On November 13, 2015, Attorney John Doe 41, of Laredo, received a one-year and 15-day partially probated suspension effective November 18, 2015, with the first 15 days actively served and the remainder probated (August 23, 2017, to August 22, 2018). The District 12 Grievance Committee found that Becerra failed to hold client funds separate from his own property, failed to promptly deliver an accounting to his client, failed to return an unearned fee, and failed to respond to the grievance.

Becerra violated Rules 1.14(a), 1.14(b), 1.15(d), and 8.04(a)(8). He was ordered to pay \$39,922.50 in restitution and \$12,412 in attorneys' fees and direct expenses.

On January 22, 2016, Attorney Susan Doe, 48, of Dallas, received a 24-month partially probated suspension effective February 1, 2016, with the first six months actively suspended and the remainder probated. An evidentiary panel of the District 6 Grievance Committee found that on or about February 3, 2012, the complainant hired Roquemore for representation in a civil matter. Roquemore failed to hold funds belonging to the complainant that were in Roquemore's possession in connection with the representation separate from Roquemore's own property. Roquemore failed to keep funds that belonged to the complainant in a separate trust account. Upon receiving funds in which the complainant had an interest, Roquemore failed to promptly notify the complainant. Roquemore failed to promptly deliver to the complainant funds that the complainant was entitled to receive.

Roquemore violated Rules 1.14(a), 1.14(b), and 1.14(c). He was ordered to pay \$2,287 in restitution, \$3,000 in attorneys' fees, and \$483.50 in direct expenses.

Roquemore had until February 21, 2016, to file an appeal.





Texas Disciplinary Rules of Professional Conduct— Client Funds

Rule 1.14. Safekeeping Property

(a) A lawyer shall hold funds and other property belonging in whole or in part to clients or third persons that are in a lawyer's possession in connection with a representation separate from the lawyer's own property. Such funds shall be kept in a separate account, designated as a “trust” or “escrow” account, maintained in the state where the lawyer's office is situated, or elsewhere with the consent of the client or third person. Other client property shall be identified as such and appropriately safeguarded. Complete records of such account funds and other property shall be kept by the lawyer and shall be preserved for a period of five years after termination of the representation.





Texas Disciplinary Rules of Professional Conduct— **Client Funds**

elsewhere with the consent of the client or third person. Other client property shall be identified as such and appropriately safeguarded. Complete records of such account funds and other property shall be kept by the lawyer and shall be preserved for a period of five years after termination of the representation.

(b) Upon receiving funds or other property in which a client or third person has an interest, a lawyer shall promptly notify the client or third person. Except as stated in this rule or otherwise permitted by law or by agreement with the client, a lawyer shall promptly deliver to the client or third person any funds or other property that the client or third person is entitled to receive and, upon request by the client or third person, shall promptly render a full accounting regarding such property.

(c) When in the course of representation a lawyer is in possession of funds or other property in which both the lawyer and another person claim interests, the property shall be kept separate by the lawyer until there is an accounting and severance of their interest. All funds in a trust or escrow account shall be disbursed only to those persons entitled to receive them by virtue of the representation or by law. If a dispute arises concerning their respective interests, the portion in dispute shall be kept separated by the lawyer until the dispute is resolved, and the undisputed portion shall be distributed appropriately.





Texas Disciplinary Rules of Professional Conduct— **Client Funds**

- DO NOT co-mingle attorney/client property (especially \$\$)
- DO NOT hold onto funds to which a client is entitled
- DO NOT co-mingle funds in dispute
- DO NOT enter into unethical fee agreements with a client

Fee agreements are KEY





Texas Disciplinary Rules of Professional Conduct – **Client Funds**

- DO use trust or escrow account to hold client funds (i.e. retainers, funds for court costs)
- DO maintain/preserve complete records of account funds for (5) years POST representation
- DO comply with rules on IOLTA programs under article XI of State Bar Rules
- DO determine whether you need to be bonded (Tex. Fin. Code 392.101)(TDCA)





Toll-Free Ethics Helpline for Lawyers

(800) 532-3947

8am - 5pm CT

Monday through Friday

NOT Confidential





Become a Debt Collection Master*

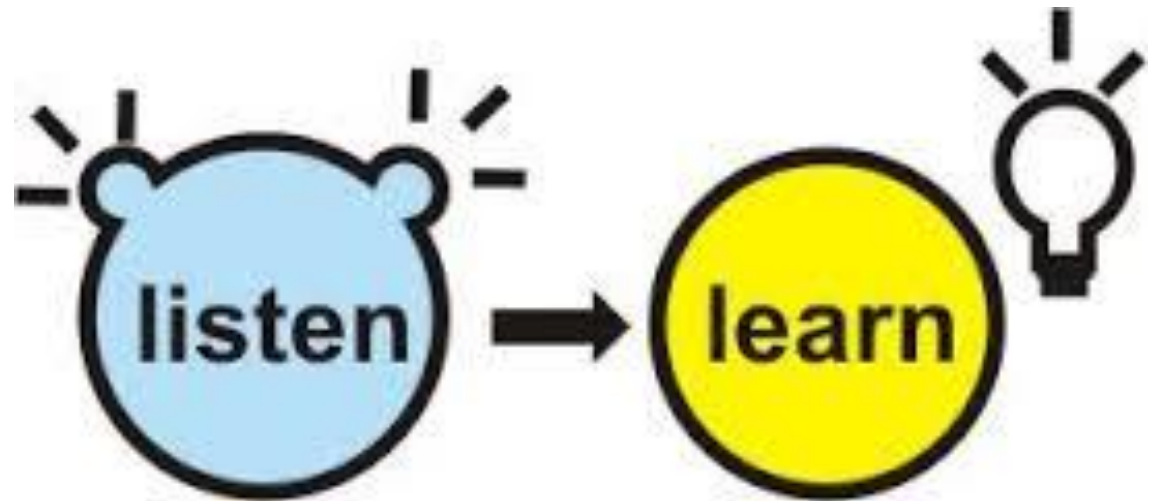
1. Refine Your Listening Skills
2. Manage Your (and Their Emotions)
3. Prepare Your Pre-Call Plan
4. Make Your Opening Statement
5. Ask Questions With Precision—Make The Transition to Payment Arrangements
6. You Cannot be Too Clear –Follow up is Key to Success

*<http://www.deniseoberry.com/become-a-debt-collection-master-and-collect-more-money-today/> and Michelle Dunn, Credit and Collections Blog



Become a Debt Collection Master*

1. Refine Your Listening Skills



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2. Manage Your (and Their Emotions)



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4. Make Your Opening Statement

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5. Ask Questions With Precision—Make The Transition to Payment Arrangements

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Become a Debt Collection Master*



6. You Cannot be Too Clear –Follow up is
Key to Success





Become a Debt Collection Master



When
do you **know**
you
have been
successful?





Any Questions or Helpful Tips?

