

CIVILITY, DOES IT MATTER?

Laredo Roadshow

**SBOT Government Section &
Texas Young Lawyers Association**

April 26, 2019

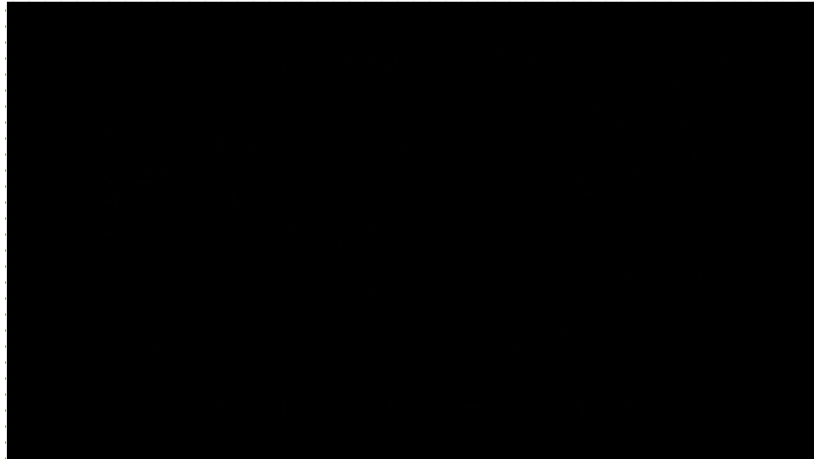
**By the American Board
of Trial Advocates**

**Justice Patricia O'Connell
Alvarez**

and

**Fred Jones from TEX-ABOTA,
San Antonio Chapter**

IS BEING ETHICAL ENOUGH?



AND DO AS ADVERSARIES DO IN THE LAW, --
STRIVE MIGHTILY, BUT EAT AND DRINK AS FRIENDS.

THE TAMING OF THE SHREW, ACT 1, SCENE 2

FROM ST. THOMAS MORE PRAYER:

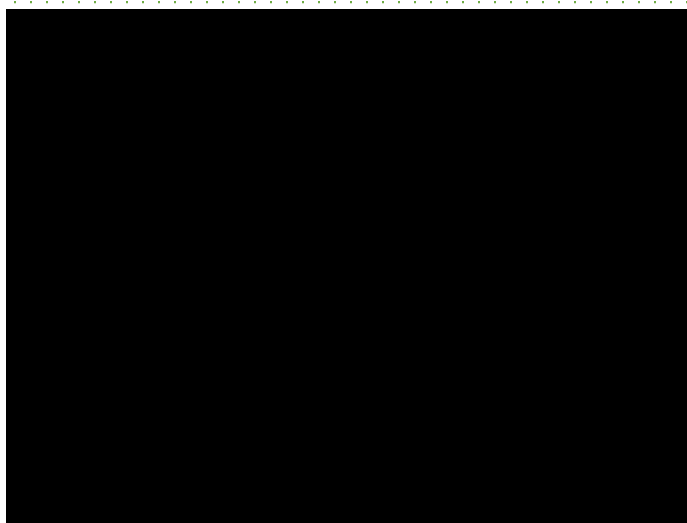
"May I be courteous to adversaries. Read with me in my library and stand always beside me so that today I shall not, to win a point, lose my soul."

OUR STARTING POINT IS INCIVILITY

As Justice Stewart might say, most of us of “*know it when we see it.*”

**CAUTION: SOME OF THE MATERIALS
CONTAIN PROFANITY.**

THE TRUNK MONKEY



WHAT IS INCIVILITY?

- Antonym of “civility”
- A rude or discourteous act

“Incivility” is synonymous of:

Discourteousness
Disrespect
Disrespectfulness
Impertinence
Impertinency
Impoliteness
Impudence
Discourtesy
Inconsiderateness
Inconsideration
Insolence
Rudeness
Ungraciousness

“Uncivil” behavior encompasses:

| | |
|---------------------------|-----------------------|
| Rude | Abrupt |
| Barbaric | Blunt |
| Boorish | Coarse |
| Curt | Gross |
| Gruff | Ill-mannered |
| Impolite | Inconsiderate |
| Insulting | Mannerless |
| Uncouth | Uncultured Unfriendly |
| Ungentlemanly, Unmannerly | |
| Unpolished Unrefined | Vulgar. |

Sandra Day O’Connor:

More civility and greater professionalism can only enhance the pleasure lawyers find in practice, increase the effectiveness of our system of justice, and improve the public’s perception of lawyers.

Kim v. Westmoore Partners (2011)
201 Cal. App. 4th 267, 293, review denied, 2012 Cal. Lexis 2232 (2012).

“Our profession is rife with **cynicism awash in incivility**. Lawyers and judges of our generation spend a great deal of time lamenting the loss of a golden age when lawyers treated each other with respect and courtesy. It’s time to stop talking about the problem and act on it. For decades, our profession has given **lip service to civility**. All we have gotten from it is **tired lips**. We have reluctantly concluded **lips cannot do the job; teeth are required**. Those teeth will take the form of sanctions.”

In Texas, there is a price to pay for cynical practices.

What are the sanctions for an attorney who ...
lies to the court,
seeks unwarranted sanctions,
bullies opposing counsel,
shows no remorse, and
effectively vows to continue such tactics by
endorsing his conduct

\$\$\$\$ PLUS A REFERRAL TO STATE BAR GRIEVANCE

Kindergarten



IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

THERESA MORRIS, WIFE OF
BOB MORRIS,
Plaintiff,

-vs-

JOHN COKER, ALLIS-CHALMERS
CORPORATION AND/OR STRATE
DIRECTIONAL DRILLING, INC.,
Defendants.

Case Nos. A-11-MC-712-SS
A-11-MC-713-SS
A-11-MC-714-SS
A-11-MC-715-SS

FILED
2011 AUG 26 PM 1:58
CLERK OF COURT
WESTERN DISTRICT OF TEXAS
BY _____

You are invited to a kindergarten party!

Non-parties Lance Langford, Erik Hoover, and Brigham Oil & Gas, L.P. invite the Court to quash subpoenas issued to them on behalf of Jonathan L. Woods, in relation to a matter currently pending in the United States District Court for the Western District of Louisiana, Lafayette-Opelousas Division, because the subpoenas were not properly served, are overly broad and unduly burdensome, and seek privileged information. In response, the Court issues the following invitation of its own:

Greetings and Salutations!

You are invited to a kindergarten party on **THURSDAY, SEPTEMBER 1, 2011, at 10:00 a.m.** in Courtroom 2 of the United States Courthouse, 200 W. Eighth Street, Austin, Texas.

The party will feature many exciting and informative lessons, including:

- How to telephone and communicate with a lawyer

The party will feature many exciting and informative lessons, including: [how to communicate, how to enter into reasonable agreements, how to limit depositions, why it is neither cute nor clever to quash depositions, an advanced seminar on not wasting the time of a federal judge] ...

Invitation to this exclusive event is not RSVP. Please remember to bring a sack lunch! The United States Marshals have beds available if necessary, so you may wish to bring a toothbrush in case the party runs late.

Accordingly,

IT IS ORDERED that defense counsel Jonathan L. Woods, and movants' attorney Travis Barton, shall appear in Courtroom 2 of the United States Courthouse, 200 W. Eighth Street, Austin, Texas, on **THURSDAY, SEPTEMBER 1, 2011, at 10:00 a.m.**, for a memorable and exciting event;

IT IS FINALLY ORDERED that Mr. Barton is responsible for notifying Mr. Woods of this order by providing him with a copy by mail or fax on this date.

SIGNED this the 26th day of August 2011.


SAM SPARKS
UNITED STATES DISTRICT JUDGE

BORDEN PARK, L.P. d/b/a STAR STORAGE DOWNTOWN, Plaintiff, v. CITY OF
SAN ANTONIO, Defendant.

Civil No. SA-03-CA-0491-RF

UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF TEXAS,
SAN ANTONIO DIVISION

2006 U.S. Dist. LEXIS 62729

August 16, 2006, Decided

The instant dispute involves the placement and content of four large billboard-type signs and the city ordinances that regulate them.

"[Lawyers] always maintained a professional bearing and were at all times candid and straight with the Court. Despite the frustrations that the Court experienced. . ."

... images that are offensive, and the parties are ordered to remove any and all back, and offensive images of scantily-clad individuals. Borden Park's signs generated animated response from the City and citizens.

... although the lawyers for both sides in this dispute fought hard (and at times even to some excess), they always maintained a professional bearing and were at all times candid and straight with the Court. Despite the frustrations that the Court experienced in this combative environment, the Court always appreciated the integrity and decency of the lawyers and herein expresses its gratitude for their efforts.

Signed this 16 day of August, 2006.
ROYAL FURGEGON
UNITED STATES DISTRICT JUDGE

OUR NEW ATTORNEY OATH

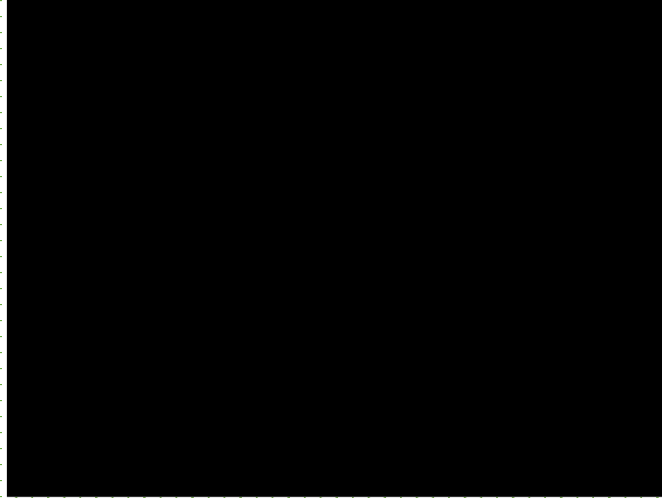
A LAWYER WILL:

“(4) conduct oneself with integrity and civility in dealing and communicating with the court and all parties.”

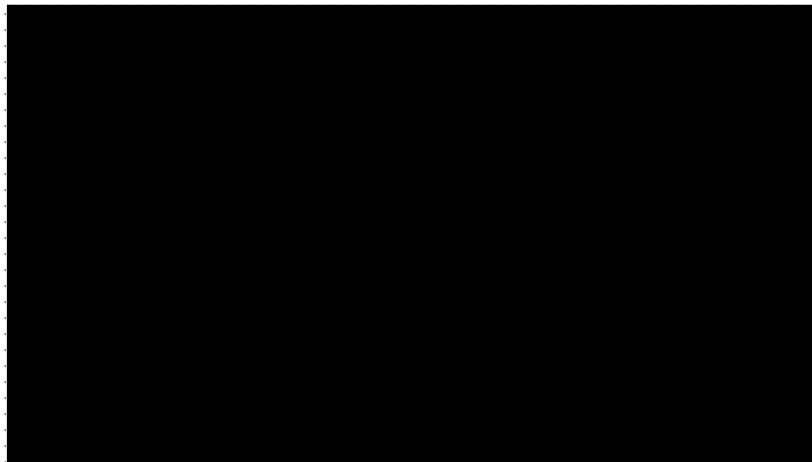
Who Participates in Civility?

- **Attorneys And Their Staff**
- **Clients**
- **Witnesses**
- **Judges**

Draining Opposing Party's Financial Resources

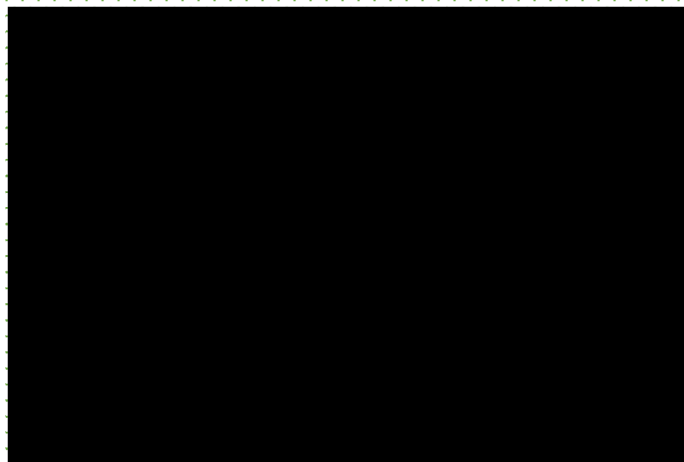


Mind Your Manners





TEACH YOUR CLIENT BEFORE THE
PROCEEDINGS



F___ ANSWER IN YOUR
PROCEEDINGS?



RESPECT YOUR OPPOSING COUNSEL



What do you do if your judge is uncivil?

Always be respectful, make a record.

In the Matter of: Judge William M. Watkins, III
757 S.E.2d 594 (W. Va. 2013)

- **24 separate violations of 9 Canons of Code of Judicial Conduct**
- **Lack of courtesy and civility: used threats, intimidation, profanity, and shouting at litigants (could not control emotions).**
- **“You are telling a damn lie and you know it’s a damn lie.”**
- **Referred to a father as “the biggest jackass in this whole operation.”**

Socrates said, "Four things belong to a judge: to hear courteously, to answer wisely, to consider soberly, and to decide impartially."

...regulating the demeanor of a judge is a difficult task, because judges are human and may occasionally display anger or annoyance, and lawyers and litigants sometimes incite judges.

Judges must also be allowed some flexibility in criticizing the performance of lawyers who appear before them.

But a judge owes a duty to treat lawyers and litigants courteously, to hear them patiently, to study their arguments and evidence conscientiously, and to decide their cases promptly.

"When a judge fails to establish, maintain, and enforce high standards of conduct, the judge 'diminishes public confidence in the judiciary and thereby does injury to the system of government under law.'"

"A judge sets the standard for the administration of justice and for the practice of law in her jurisdiction. 'Citizens judge the law by what they see and hear in courts, and by character and manners of judges and lawyers.'" *In re Wilfong*, 765 S.E.2d 283 (W.Va. 2014); *In re Watkins*, 757 S.E.2d at 606 (W. Va. 2013)

What to do with argumentative and toxic emails, letters, or voicemails from your opponent?

Warning: they last forever... and may end up on social media or youtube.com or as an exhibit!

Dear

I am sorry that a hurricane hit Houston.

I am sorry that I had no power or was

I am sorry that I had to extend my stay

I am sorry that CenterPoint Energy took away power to my home so that I could return to it

I am sorry that upon returning to my roughly 50 ft. x 6 ft. swath of human excrement with a raw sewage leak in one's backyard was

I am sorry that I had to threaten City exposure in order to get them to even agree

I am sorry that these city officials chose me no other options.

I am sorry that the Houston Public Works feces out of my yard on the day our deposition was scheduled.

I am sorry that the city required my presence at the debacle noted immediately above. And, I am sorry that this debacle managed to uproot some more of my trees.

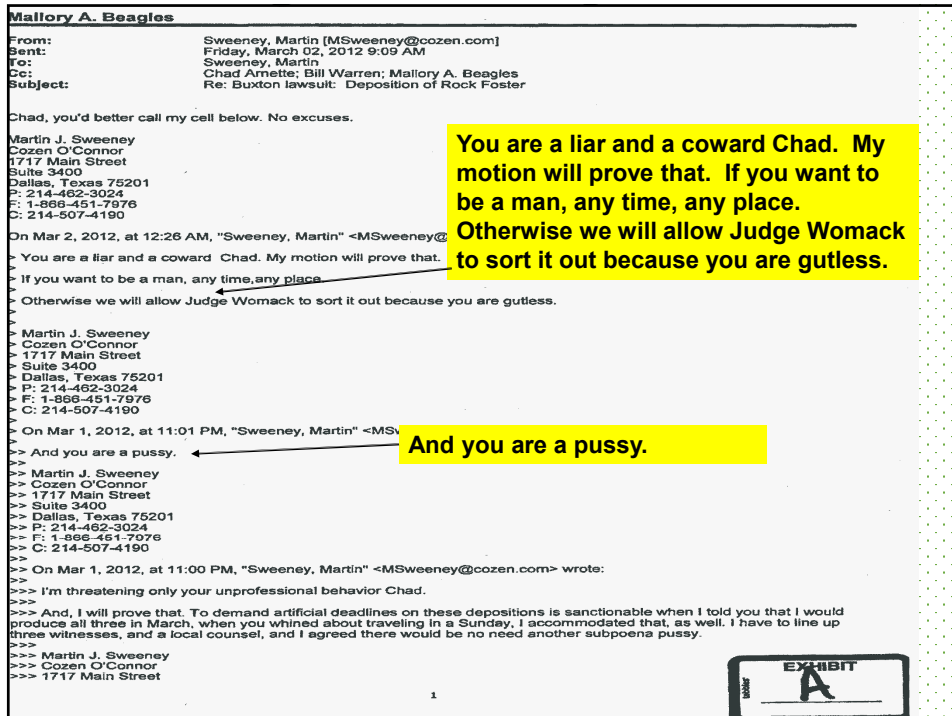
I am sorry that your office communicated that you would only "agree" to my rescheduling the deposition if we agreed to pay your travel expenses. I am also sorry they did not mention anything about attorney's fees in their voicemail. I am especially sorry that your associate, after I had agreed to pay your reasonable travel expenses, decided to put in writing that while the deposition was cancelled, it was "unilaterally cancelled," and that you did not "agree" to the cancellation. I am sorry that you either went back on your word or, more likely, just do not have a word.

I am sorry that you think the judge should be involved in this matter. I wonder if the judge will be sorry about that, too.

I am sorry that you are the only lawyer in this case that consistently goes out of his way to be unaccommodating and unprofessional with the other lawyers. I am sorry you are from Dallas.

Very truly yours,

I am so sorry that a hurricane hit Houston.
I am sorry . . .
I am sorry that you are the only lawyer in this case that consistently goes out of his way to be unaccommodating and unprofessional with the other lawyers
I am sorry you are from Dallas



The law firm emailed a statement to the ABA Journal that said Sweeney “is no longer with the firm.”

“We expect all of our attorneys and professional staff to maintain the highest standards of professionalism and civility at all times in their conduct on behalf of our firm clients.”

From: 31
Sent: Thursday, October 09, 2008 2:50 PM

To: While I am sorry to hear about your disabled child; that sort of thing is to be expected
Cc: when a retard reproduces, it is a crap shoot
Subject: RE: sometimes retards can produce normal kids,

Three things C

(1) While I look at the bright side at least and definitely know the kid is yours.
retard & they pro
bright s

(2) You are confusing realities again the retard love story you describe taking place in a pinto and trailer is your story. You remember the other lifetime movie about your life: "Special Love" the Corky and Marie story; a heartwarming tale of a retard fighting for his love, children, pinto and trailer and hoping to prove to the world that a retard can live a normal life (well kinda).

(3) Finally, I am done communicating with you; your language skills, wit and overall skill level is at a level my nine-year could successfully combat; so for me it is like taking candy from well a retard and I am now bored. So run along and resume your normal activity of attempting to put a square peg into a round hole and come back when science progresses to a level that it can successfully add 50, 75 or 100 points to your I.Q.

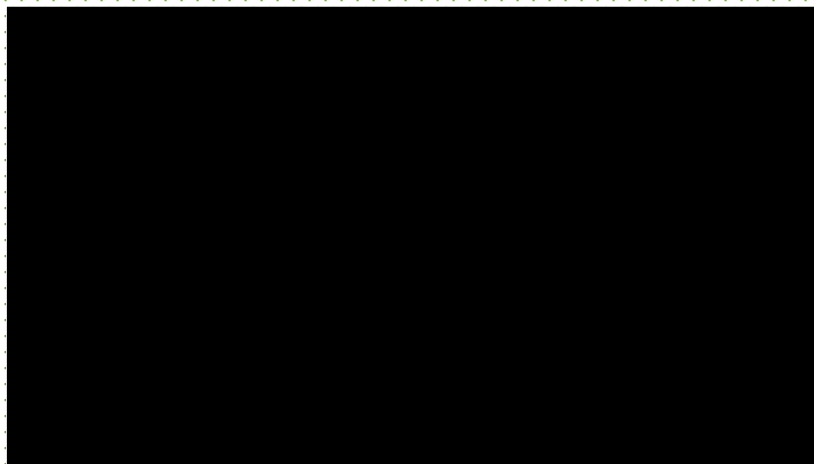
Judge Fred Biery's Non-Kumbaya Order

- "If you can't say something nice, don't say anything at all."
- Did not expect the parties to hold hands and sing "Kumbaya" out along the Medina River, and instructed them to behave.
- "To the lawyers who have advocated professionally and respectfully for their clients' respective positions: Bless you."

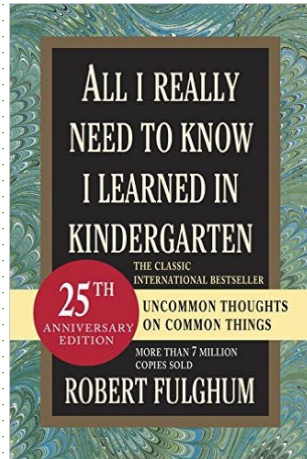
TOXIC VOICEMAIL CAN BE FOREVER, TOO...



Where do we go from here?



Let's go back to the topic of Kindergarten...



- **Play fair**
- **Don't hit people**
- **Put things back where you found them**
- **Clean up your own mess**
- **Don't take things that aren't yours**
- **Say you are sorry when you hurt somebody**
- **When you go out in the world, watch out for traffic, hold hands, and stick together**
- **Warm cookies and cold mild are good for you**

And ...Live a Balanced Life

**Learn some and think some and
draw some and paint and sing and
dance and play and work everyday
some... and be kind!**

**One Last Thing: What Does History
Teach Us About Civility?**

- **The Surrender of the Confederate Army**
- **Honor**
- **Respect**
- **Humility**
- **Graciousness**
- **Magnanimity or Greatness of the Souls ----**

CONCLUSION

**We owe each other *respect,*
kindness, diligence, candor,
punctuality, graciousness, honor
... ah, and show the greatness of
*your soul***