

# Staying Civil in an Adversarial Profession?

These lawyers say it's possible.

An excerpt from the *State Bar of Texas Podcast*

November marked the 30th anniversary of the Texas Lawyer's Creed, a statement of professionalism and civility adopted by the Texas Supreme Court and Court of Criminal Appeals in 1989.

On the November 2019 episode of the *State Bar of Texas Podcast*, host Rocky Dhir interviewed past State Bar President Buck Files, a Tyler criminal defense lawyer, and Rockwall County Criminal District Attorney Kenda Culpepper, who were instrumental in the courts' reaffirmation of the creed in 2013 and subsequent efforts to encourage Texas lawyers to live by it.

In this edited excerpt, Files and Culpepper talk about what to do when incivility rears its head and whether civility can really coexist with zealous advocacy. Go to [texasbar.com/podcast](http://texasbar.com/podcast) or wherever you listen to podcasts to hear the full episode.

**Files:** Lawyers can be inappropriate in the courtroom. They can be personal, accusatory, and uncomplimentary. I think that you just maintain your dignity and behave the way you always do. This is not to say that you can't make your thoughts known to the lawyer outside the courtroom when it's a one-on-one situation, you don't have an audience, you're not embarrassing him in front of someone, but you can make it crystal clear that you do not appreciate his conduct and do not intend for it to continue. I have seen that, and I think it works.

**Culpepper:** When we were talking to Fred Hagans, Blackie Holmes, and Lamar McCorkle about when they first started talking about creating the Texas Lawyer's Creed, [they told us] they had a wonderful task force that was led by Justice [Eugene] Cook and they talked a lot about these issues, about the desire to have this professionalism and have something written

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down that was inspirational to lawyers in their profession. One of the big arguments that they came up against was that people were concerned that having a Texas Lawyer's Creed would sterilize the process in some way, would make the practice of law less fun but also less about advocacy. We can't just go in and everybody shake hands and everybody be sweet and natural. We're advocates, we're advocating our position, and it is many times in direct opposition to the person on the other side.

**Dhir:** It's an adversarial process.

**Culpepper:** It's an adversarial process, and quite frankly as a trial lawyer I appreciate that adversarial process. I appreciate the opportunity to be passionate and zealous about the position that I'm taking in the courtroom. But I think that that argument fell flat after we saw the Texas Lawyer's Creed come about, because we did not see lawyers be any less zealous, any less passionate, any less advocates in the courtroom. There is a way, like the Lawyer's Creed talks about, to "disagree without being disagreeable." There is a way to be advocates and zealous and passionate about our cause without being malicious and

ugly. And outside the courtroom, there is a way to advocate on behalf of your client without burying your opposing counsel in discovery that's irrelevant to the case or without misleading them about a deposition date or not telling them about a deposition date.

**Files:** I have a Court TV story. We're in trial in Dallas, in a case that took 63 days. It was a son who was accused of murdering his mother and a jury found that the state was right in its accusation. A lawyer and I were involved in a hotly contested morning session. He wanted to have me held in contempt; I wanted to have him held in contempt. We take a break, we get coffee and we're standing out talking, and the TV camera is on us and they're getting calls from all over America about, "How can these people be the way they are in the courtroom and be visiting during a break?" And we simply said, "We're Texas lawyers. We turn it on, we turn it off." **TBJ**

*To listen to the full podcast, go to [texasbar.com/podcast](http://texasbar.com/podcast) or [legaltalknetwork.com/podcasts](http://legaltalknetwork.com/podcasts). This episode qualifies as 0.5 hour of self-study ethics MCLE credit for State Bar of Texas members. (To claim self-study, attorneys should log in to My Bar Page at [texasbar.com](http://texasbar.com) and click on the link to "View/Report MCLE Hours." From the MCLE homepage, click on "Add Attendance" and go to the tab to add self-study.)*