

Who looks Foolish?

The anonymous blogger who has stated on his blog site that Dale Markland looks “Foolish” has recently declared that we are all “Nothing More Than Cans of Coca Cola®”. Isn’t it really the anonymous blogger who looks “Foolish”?

When one uses the Google™ search engine, and perhaps some other search engines, to search for the name Dale Markland, or the law firm name Markland Hanley, the search engine often responds with a particular blog site hit that has the caption “Dale G. Markland of Markland Hanley Looks Foolish.” This caption represents a statement from an anonymous blogger made on his personal blog site in September, 2008. The anonymous blogger’s “foolish” caption continues to appear on Google™ results when one searches for Dale Markland or Markland Hanley for three reasons. First, it continues to appear because the caption for the blog comment includes both Dale Markland’s name and the firm name, Markland Hanley. Second, it continues to appear because the blog site is linked to other sites that have much greater “power” on search engines than the anonymous blogger’s blog site itself. For instance, this blogger has linked his blog site to some really super-powerful sites, including the web site of a very well known DWI/DUI criminal defense attorney who is so adept at obtaining high visibility and great “power” on the Internet for his site, that the linking to this very “powerful” site as a connecting link imbues the anonymous blogger’s personal site with great “power” as well! And third, the anonymous blogger’s comment continues to appear on searches because some search engines, including Google™, look for negative content to offset positive content, even if the negative content is totally bogus and false, as in the case of this anonymous blogger’s content. In considering the credibility of this blogger’s conclusion that Dale Markland, in his practice of law, looks foolish, it is important to note that there is no indication whatsoever that the blogger in question is a licensed lawyer in any state, that he has ever practiced law in his life, or that he knows anything about a lawyer’s duty to protect the interests of the client. In considering the credibility of the blogger’s conclusion it is also important to note that the blogger in question has, at various times, also stated on his blog site: that we are all “nothing more than cans of Coca Cola®”; that “men are victimized in domestic violence as often as women are”; that if a woman refuses to have sex with her husband, it is the husband’s “moral duty to sleep with other

women”; that he honors dead veterans by “refusing to pretend they died for anything”; that “women generally lose interest in their beta male husbands. Betas are boring. They don’t bring drama. Thus, women remove children from the safety of a beta male’s home, and bring them into the arms of a sociopath”; that such a woman who loses interest in her beta male husband “can take her children into a drug house where your children will be molested and beaten to death”; that “the time for revolution is near” and that the time for such revolution “hasn’t been so ripe since Czar Nicholas was fed lead rather than cake.” In view of such statements made by the anonymous blogger and considering the discussion below, Markland Hanley believes that, once you have read the more complete statement of facts as set forth below, you will agree—it is the anonymous blogger, not Dale Markland, who looks “foolish.”

In addition to stating in the caption of his blog comment that Dale Markland looks “foolish”, the anonymous blogger, in the body of his blog comment, also calls Dale Markland “uncivil.” The anonymous blogger came to his conclusions that Dale Markland was “foolish” and “uncivil” after reading on an unrelated blog site a one-sided letter written by an attorney who represented a codefendant that was adversarial to Mr. Markland’s client in litigation. The one-sided letter was inaccurate in its assertions and incomplete in its rendition of the facts. The anonymous blogger made his statements that Mr. Markland looked “foolish” and was “uncivil” without ever having heard any complete or objective statement of the events from Mr. Markland, or from anyone else. The anonymous blogger implied in his blog comment that Dale Markland refused to reschedule a deposition when the opposing attorney suffered through a hurricane, apparently jumping to that unsupported conclusion from what he read in the one-sided letter. That implication is false. Dale Markland did not refuse to reschedule a deposition after a hurricane. In fact, he assisted in re-setting the deposition in question as he had done previously in the case.

The Events Related to the One-Sided September 26, 2008 “Hurricane Letter”

The one-sided letter was written in relationship to a case which was pending in a Houston, Texas state district court. There were at one point in time 10 parties in the action,

including two sets of plaintiffs and eight defendants/third party defendants. A particular Houston attorney who represented one of the defendants in the case had filed a cross-action against Dale Markland's client, and was adverse to Mr. Markland's client. That attorney will be referred to as the "adverse attorney."

The adverse attorney requested the deposition of one of Mr. Markland's client's former employees which Mr. Markland agreed to assist in setting up in Fort Wayne, Indiana where the former employee lived. Mr. Markland worked with all of the multiple parties' counsel and the witness to get a mutually convenient date for the deposition. The deposition was formally set once previously, and was then cancelled because one of the attorneys had a scheduling conflict arise. Mr. Markland again worked with the parties' counsel and the witness to arrive at a new mutually convenient date for the deposition. All counsel and the witness agreed to the date of September 25, 2008 for the deposition in Fort Wayne.

The adverse attorney, who would later write the September 26, 2008 letter, issued a deposition notice for the September 25 deposition requiring the deponent to be present on that date at a specified place in Fort Wayne, Indiana.

A hurricane went through the Houston, Texas area on September 12/13, some twelve to thirteen days before the deposition noticed by the adverse attorney was to be taken.

Almost all of the attorneys in the case were from the Houston area. Mr. Markland was in contact with several of these attorneys over the time frame between the hurricane and the deposition date and none of the contacted attorneys requested a re-setting of the deposition. The news which was being shown in the Dallas area where Mr. Markland's firm is located, described the damage and water related problems around Houston, which is about 50 miles inland from the Texas Coast where the hurricane initially struck, as being significant, but not of the hurricane Katrina variety as affected New Orleans.

Mr. Markland had, during this time frame, no knowledge whatsoever of any problems that the adverse attorney was having at his personal residence related to the hurricane that went through the Houston area.

Mr. Markland flew to Chicago to connect to a flight to Fort Wayne to go to the deposition that had been noticed by the adverse attorney.

In Chicago, Mr. Markland received a voice mail message from his office saying that the adverse attorney had unexpectedly cancelled the deposition. After speaking with his client, Mr. Markland called his partner, and asked her to call the adverse attorney and to request that his firm pay the Markland Hanley client for the travel expenses and attorney travel costs arising from the unnecessary trip—a trip that could have been avoided by a more timely cancellation.

Mr. Markland's partner called the adverse attorney, but the adverse attorney was not in, and she left the adverse attorney a voice mail message requesting that his firm pay for the travel expenses and attorney flight time for the unnecessary trip.

This was, without question, the right thing to do for the client's interests. It is the normal procedure that any professional and ethical lawyer in Texas would follow. In our view, most law firms in Texas in the position of the adverse attorney's firm would agree without hesitation to recompense the client that was out the money for the unnecessary trip. Our firm certainly would have done so without hesitation if we had been on the other side.

After Mr. Markland's partner left the adverse attorney the voice message, the adverse attorney's secretary called Mr. Markland's partner and left her a voice message. The voice message stated that the adverse attorney's firm would agree to pay the unnecessary travel expenses. This was as his firm should do—his firm obviously recognizing its responsibility for the unnecessary trip and agreeing that Markland Hanley's client should be recompensed in view of the untimely cancellation of the deposition.

Unfortunately, the adverse attorney's secretary's voice message said nothing about the attorney's travel time costs, which Mr. Markland's partner had also requested in her voice message. The adverse attorney's secretary mentioned in her voice message travel expenses only, and did not cover the issue of attorney travel time and there was not yet any agreement on that subject. Upon receipt of the adverse attorney's secretary's incomplete responsive voice message, Mr. Markland's partner followed up with the adverse attorney and clearly stated to the adverse

attorney that his secretary failed to address the attorney's fee issue and that there was not yet any agreement on that issue.

There was a subsequent exchange of communications between the two law firms in which the adverse attorney asserted that Mr. Markland's partner did not mention attorney's fees in her phone message. Mr. Markland's partner stated that she had.

Markland Hanley asked the adverse attorney to provide the recorded voice message which Mr. Markland's partner had left with the adverse attorney. If Mr. Markland's partner had failed to mention the attorney's fees in the message, our firm would have dropped the issue of recompense to its client relative to the attorney's fees and our firm would have borne that cost. The adverse attorney refused to provide Markland Hanley with the Markland Hanley partner's recorded voice message—even though he stated that he still had it.

The adverse attorney sent to Mr. Markland and to all of the other counsel in the case his inflammatory and inaccurate one-sided September 26, 2008 letter, which someone released to the internet, and which was then widely circulated on the internet. In that letter, the adverse attorney asserted that Mr. Markland's partner did not mention attorney's fees in her voice mail message and that Mr. Markland “went back on” his word or “more likely just did not have a word,” effectively accusing Mr. Markland of breaching an agreement that never existed.

The language utilized by the adverse attorney in the letter apparently prompted the anonymous blogger who calls Mr. Markland foolish and, who had not heard all of the facts as related above, to reach unjustified conclusions. To put these unjustified conclusions in perspective, the following points should be kept in mind:

- It was the adverse attorney who noticed the deposition and who cancelled it. The issue was not whether or not Mr. Markland would re-set a deposition. The adverse attorney could re-set the deposition at any point in time that he desired and subpoena the witness for the deposition. The issue was not whether the deposition would be re-set, but rather whether the adverse attorney's firm had been asked by Mr. Markland's partner to pay attorney's fees for travel time as well as travel expenses for the unnecessary trip.

- The hurricane passed through the Houston area 10-11 days before Mr. Markland flew to Chicago for the deposition, not the night before. None of the multiple Houston lawyers in the case suggested cancelling the deposition in that 10-11 day period of time. Additionally, the deposition was in Fort Wayne, Indiana, not in Houston, Texas. Obviously, there was no hurricane damage in Fort Wayne, Indiana.
- Mr. Markland, at the time he flew to Chicago, knew nothing about any water leakage around or resultant damage to the adverse attorney's residence resulting from the hurricane that went through the Houston area, and had not gotten so much as a phone call or timely email from the adverse attorney requesting the deposition be re-set. If Mr. Markland had received any such communication from the adverse attorney, Mr. Markland would have cancelled his flight arrangements to Chicago and Fort Wayne and would not have gone and that would have prevented the unnecessary travel costs to the client.
- Very shortly after the unnecessary trip, Mr. Markland did again coordinate the schedules of all counsel and of the witness and assisted in re-setting the deposition to another mutually agreeable date—just as he had done on a previous occasion when another attorney in the case had a scheduling conflict arise. Mr. Markland did not refuse to assist in re-scheduling the deposition, or seek any sanction against the adverse attorney. Mr. Markland acted as he always acts—in a professional and civil manner. This was done by Mr. Markland, despite the fact that the adverse attorney's law firm had not at that time paid for either the unnecessary travel expenses or attorney travel time—nor has it paid those costs to date.
- In requesting that the adverse attorney's law firm recompense the Markland Hanley client for the unnecessary travel costs, Markland Hanley did what any professional and ethical attorneys would have done in protecting their client's interests. It was appropriate for Markland Hanley to ask on its client's behalf for recompense for the unnecessary travel costs, and it was also appropriate for the

adverse attorney's firm to recompense the Markland Hanley client for the unnecessary travel costs—as their agreement to pay the travel expenses evidences.

- Mr. Markland never “went back on his word.” Mr. Markland had no agreements whatsoever with the adverse attorney, and in particular no agreements to go back on regarding the attorney's fees issue. The portion of Mr. Markland's partner's voice message left for the adverse attorney regarding the attorney's fees issue, was not responded to by the adverse attorney's secretary, and no such agreement had been reached. The dispute was about the content of Mr. Markland's partner's voice mail left for the adverse attorney, namely, whether it covered attorney's travel time. The adverse attorney could have settled the dispute by simply providing Markland Hanley with a copy of Mr. Markland's partner's voice mail message that she left for the adverse attorney, which he refused to do. If Mr. Markland's partner only mentioned travel expenses and not attorney's travel time fees in the voice message, Markland Hanley would have dropped the issue and there would have been no dispute.
- Mr. Markland and Markland Hanley are proud of their actions in the case and of their appropriate representation of their client. They did what would be expected of professional and ethical attorneys.

Neither Dale Markland, nor his partner, hold any animosity toward the adverse attorney who wrote the “hurricane letter.” As we understand it, he no longer even practices law. The potential harm done to Dale Markland and Markland Hanley initially arose from the ill-advised release of the letter onto the Internet by someone associated with the case—perhaps a secretary or other support personnel. The problem was exacerbated by an ill-informed anonymous blogger who, without sufficient information, decided to call a highly respected attorney, Mr. Markland, “foolish” and “uncivil” and who falsely and maliciously accused Mr. Markland of being the stereotypical heartless trial lawyer who refused to re-set a deposition for a hurricane victim and who broke an agreement. These claims are both false. Mr. Markland assisted in re-setting the deposition and he did not break any agreement. There was no agreement.

It is our view that bloggers, particularly anonymous bloggers, should fully understand the facts of the situation they are commenting on before criticizing others.

Back to the Foolish Blogger

Mr. Markland and Markland Hanley properly and ethically represented their firm's client. To do so is not "foolish," as the anonymous blogger asserts.

The anonymous blogger also asserts that Mr. Markland was "uncivil." The blogger presumably came to his conclusion that Dale Markland was "uncivil" from reading the portions of the adverse attorney's one-sided letter in which that attorney inaccurately asserted that Mr. Markland "went back on his word", an event that never occurred. The adverse attorney also stated in his one-sided letter that Mr. Markland was a lawyer who went out of his way to be unaccommodating and unprofessional with other lawyers. That is simply untrue. In the case in question, and relative to the deposition in question, Mr. Markland had already attempted to set the deposition up at mutually-convenient times on multiple occasions in the past, and had already agreed to reset it on one occasion from its set date to accommodate another attorney's conflict. If the adverse attorney had simply picked up the phone and called Mr. Markland or had sent a timely email requesting resetting of the deposition before Mr. Markland flew to Chicago, Mr. Markland would have gladly done so at that time. In fact, Mr. Markland did subsequently coordinate the schedules of all counsel and the witness and assisted in arriving at a new mutually convenient deposition date as he had done previously. There were no instances in the lawsuit in which Mr. Markland was unaccommodating to any attorneys in the case relative to scheduling or other matters, and in Markland Hanley's view, all of the other attorneys in the case other than the adverse letter writing attorney would agree with that. Mr. Markland has always strived to conduct himself in a civil, professional and cooperative manner, and on this point, Markland Hanley would refer the reader to the many testimonials from its adversaries found on the Markland Hanley web site that attest to Mr. Markland's civility and professionalism. In fact, two of the opposing plaintiffs' attorneys in the case related to the one-sided letter have provided testimonials that are included on the firm web site which state, among other things, that Mr. Markland is "ethical and honest" in his dealings with his adversaries and that Mr. Markland is "a respected adversary." Mr. Markland has been AV rated by the *Martindale Hubbell Legal*

Directory for over three decades, attesting to his professionalism and his high ethical standards. Mr. Markland has been selected as a Fellow in the Texas Bar Foundation, an organization comprised of some of the most respected lawyers in Texas. New members are selected from 1/3 of 1% of the membership of the State Bar of Texas. One of the prerequisites for selection to that organization is that the attorney be a person of high professional standing among his peers. Mr. Markland's entire career evidences his civility and professionalism. He did nothing "uncivil" in connection with the events in question.

So you make the call—who is "foolish" and "uncivil"? Is it Mr. Markland who, through his partner, requested payment to his client from an adversary's law firm for useless costs expended by the client—an act that any reasonable, professional and ethical attorney would take on his client's behalf? Or is the foolish and uncivil one the anonymous blogger, who read a one-sided, incomplete, and inaccurate letter written by an attorney he did not know, regarding a subject matter about which he had no first hand knowledge, who then, without even attempting to hear the other side of the story, came to the conclusion that Mr. Markland looked "foolish" and acted "uncivil", and who then published that conclusion on the internet, thereby defaming and potentially harming the reputation of Mr. Markland, a highly respected attorney and a man that the anonymous blogger did not even know? Who is the "foolish" and "uncivil" individual? Could it be the anonymous blogger who declares that we are all "Nothing More Than Cans of Coca Cola[®]"? You make the call.

Markland Hanley