

## Ways to Get in Trouble Harassing a Third Party

by

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Rule 4.4, MRPC, provides:

*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.*

The following are the top five ways for attorneys to get in trouble for violating Rule 4.4:

### **5. Use really bad language in a court proceeding and then refuse to answer the complaint.**

At a settlement conference Attorney said to the opposing party: "Up your - - -" (expletive deleted) and then refused to respond to her complaint. An investigation was opened to determine whether the attorney had crossed the line articulated by the court in *In re Getty*, 401 N.W.2d 688, 671 (Minn. 1987). The court stated: "Lawyers must be encouraged to represent their clients vigorously and we are hesitant in any way to interfere with an attorney's ability to do so; yet there is a line that should not be crossed and respondent has crossed it." Attorney's comment served no legitimate purpose and could only have been made to burden or embarrass the other person.

### **4. Use really bad and sexually harassing language.**

Attorney represented husband in seeking an order for protection. As part of the evidence submitted to the court, Attorney prepared an affidavit for husband, including a quote from a neighbor stating the wife was the "slut of Pleasantville." Just before court, wife overheard Attorney saying to husband, "So this is the slut of Pleasantville." As she walked away she heard Attorney say, "Ya, she sure looks like the slut of Pleasantville." Where such conduct is isolated the Director's policy is to issue an admonition.

Admonitions have also been given to (1) an attorney who wrote "stupid bitch" in reference to another attorney on his copy of the scheduling order, and (2) a defense counsel who referred to the prosecutor as "you bitch" within the hearing of the judge and court reporter.

### **3. Threaten publication of private facts.**

Attorney A represented husband in dissolution. After the dissolution, a dispute over visitation arose. Attorney A faxed ex-wife a letter at her work stating that she was in contempt of court, stated that she was "unstable," demanded a psychiatric evaluation and threatened a change of custody. Attorney A could not have reasonably expected that the fax to ex-wife would not be seen by her employer or coworkers. The effect of the lawyer's conduct was clearly embarrassing, if not potentially damaging to ex-wife.

Attorney B threatened to reveal an alleged affair of the adverse party in order to gain a settlement in a civil case.

## **2. Threaten to report an unrelated matter to a licensing board, the IRS or the cops.**

Attorney A represented Jane Buyer in the purchase of Joe Mortician's business. Attorney A had represented Joe on an unrelated matter in the past. Joe still owed him attorneys' fees.

Joe brought two conciliation actions against Jane and Attorney A wrote to Joe saying, "You are playing with fire and could lose your license to practice mortuary science. The TV exposé [concerning your DWI while driving a hearse] will also be available to the judge."

Attorney A's attempt to intimidate Joe with a professional disciplinary investigation and use of an unrelated misdemeanor conviction served no substantial purpose other than to embarrass or burden Joe.

Attorney B represented clients in a dispute with Jack and Jill. Jack and Jill sent a letter to Attorney B's clients accusing them of numerous things. Attorney B wrote to Jack and Jill threatening to file criminal charges and to report potential tax avoidance to the IRS unless they apologized for their letter and made a \$10,000 settlement.

## **1. Get really petty about something very insignificant.**

Attorney represented client in a personal injury matter. At client's request he asked Therapist to fax him client's latest treatment records.

Therapist's Clerk then sent Attorney a statement for \$12.25 (\$10 search charge plus \$.75 per page for the three pages faxed to him). When Attorney protested the charge, Clerk explained that the charges were standard and within the fee schedule established by Minn. Stat. sec. 144.335, subd. 5. Attorney angrily told Clerk he would contact every association he belonged to and inform them about Therapist's "outrageous practices."

Attorney called his client's insurance company and had them direct payments for Therapist's medical services to him. He in turn forwarded the payments to Therapist. Attorney then sent Therapist a bill for \$50 for "handling charges."

Attorney's conduct in directing insurance company to deliver payment to him instead of Therapist and then charging a \$50 handling fee in retaliation for the legitimate medical records fee requested by Clerk violated Rule 4.4.