

Courtesy, Civility, and Discipline

by
Timothy M. Burke, Senior Assistant Director
Minnesota Office of Lawyers Professional Responsibility

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"Civility" is a hot topic in the legal profession these days, to the point that the Supreme Court has even adopted Professionalism Aspirations for lawyers.

Most issues of civility, courtesy and manners are outside the scope of the Rules of Professional Conduct. Occasionally, however, conduct which is not civil, is discourteous or exhibits bad manners also runs afoul of the rules. See, e.g., *In re Starr*, 577 N.W.2d 210 (Minn. 1997); Cleary, "Professionalism: More Than Civility," *Bench & Bar* (October 1999). Often these situations involve a momentary "brain lock" which gets the lawyer into trouble. A recent admonition illustrates this point.

A male lawyer was representing a client in a juvenile proceeding. The lawyer telephoned the court administrator's office in a county other than the county that was the principal site of the judicial district. The lawyer stated to a female deputy clerk that the lawyer wanted to submit a not guilty plea on behalf of his juvenile client. The deputy clerk informed the lawyer that she was not familiar with Juvenile Court procedures and that she would have to transfer the lawyer to the judicial district's main court administrator's office, where juvenile matters were handled.

At that point, the lawyer said, "I'm going to come there and b***h-slap you. You've worked there forever; like ten f***ing years or so. I think you would f***ing know something." The lawyer was not laughing when he spoke the words; the deputy clerk did not perceive him to be joking. Although the lawyer's tone was stern, the deputy clerk did not truly feel threatened. The deputy clerk reiterated to the lawyer that he had to speak to the Juvenile Court division at the other court administrator's office.

The lawyer was issued an admonition for violating Rule 4.4 of the Minnesota Rules of Professional Conduct. This rule provides in pertinent part: "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 lawyer's statements had no substantial, or even legitimate, purpose. Those statements had at least the potential to embarrass and burden the deputy clerk. The lawyer's statements were sufficiently offensive, unprofessional and demeaning that they understandably could, in and of themselves, embarrass and/or burden the deputy clerk.

As the Director of the Office of Lawyers Professional Responsibility said in the previously cited *Bench & Bar* article: "Good lawyers are not only ethical, they are also professional, and they do not need to resort to misbehavior to get our attention. They are disciplined, they are focused on serving their clients effectively and, perhaps most importantly, they value their reputation within the community and will not allow it to be stained by a momentary lapse of reason."