

# THE DAILY RECORD

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## Legal Currents

### Lawyers behaving badly

*This column, featured every Monday, tackles timely issues important to the local legal community.*

*"It's important to remember that feminism is no longer a group of organizations or leaders. It's the expectations that parents have for their daughters, and their sons, too. It's the way we talk about and treat one another. It's who makes the money and who makes the compromises and who makes the dinner. It's a state of mind. It's the way we live now."*

— ANNA QUINDLEN



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In *Ladcapp Value Partners, LP v. Lowenstein Sandler PC*, no. 600973-2007, attorney Michelle Rice brought a motion pursuant to CPLR 3104 seeking a court-appointed referee as a result of attorney Thomas B. Decea's conduct during a deposition in the case.

New York County Supreme Court Justice Robinson Edmead granted her motion and appointed a referee to supervise all subsequent depositions in the matter after concluding Decea engaged in a pattern of abusive, inappropriate and sexist behavior toward Rice on the record during a deposition of one of the parties.

During the deposition at issue, Decea, charmer that he was, repeatedly inquired on the record as to Rice's marital status. At one point, he also inquired as to why she chose not to wear a wedding ring and the following exchange occurred:

Decea: "We're interested as to why you don't wear your wedding ring."

Rice: "Is that right? You can be interested all you want."

Decea: "I'm very interested."

He also referred to her as "dear" and "hon" and advised her she'd "better get someone else here to try this case, otherwise you're going to be one sorry girl."

Later in the deposition, he stated "[t]his is not a white col-

lar interview that you're sitting here interviewing something with your cute little thing going on."

In response to the allegations in Rice's motion, Decea maintained that, during the deposition in question, Rice made "harassing facial expressions."

He also contended that while he "aspire[d] to be civil" he was "unaware of any rule or law that requires civility between counsel."

Most remarkably, he asserted he was unaware Rice was offended by his behavior, while concurrently acknowledging that during the deposition she threatened to file a com-

plaint against him due to his behavior.

In the *Ladcapp* decision, the court cited a case with a similar fact pattern, *Principe v. Assay Partners*, 154 Misc.2d 702. In *Principe*, a male attorney made a number of inappropriate remarks to a female attorney during a deposition, including: "What do you know, young girl"; "Be quiet little girl"; and "Go away, little girl." *Principe* was decided in 1992.

While I wish it could be said that *Ladcapp* also was decided in the early '90s, sadly it was handed down just last week. Despite the passage of 15 years, it seems there are still attorneys like Decea who have yet to learn that denigrating opposing counsel on the basis of their gender is not only juvenile and offensive, but unacceptable.

Like their male counterparts, women attorneys owe their clients the duty of zealous representation and should not be demeaned for assertively and effectively representing their client's interests.

Attorneys like Decea who are uncomfortable with women who advocate strongly for their clients would be wise to either change with the times or learn to keep their antiquated views to themselves and off the record.

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