



**Crossing the Line, Civility and Dealing with  
Disruptions During Annual Meetings**

**2024 SB2 Moderator's Workshop**

**January 13, 2023**

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### **Civility v. Protected v. Disruptive**

- **Civility:** *formal politeness and courtesy in behavior or speech.*
- **Civil discourse:** *“the free and respectful exchange of different ideas. It entails questioning and disputing, but doing so in a way that respects and affirms all persons, even while critiquing their arguments.”*  
National Institute of Civil Discourse.

- **Incivility not to be confused with Unprotected Speech or Disruptive Speech**

- Otherwise protected speech can be disruptive
- Uncivil speech can be protected
- Otherwise civil speech can be disruptive
- Barron v. Kolenda, 491 Mass. 408 (2023)

“Although civility can and should be encouraged in political discourse, it cannot be required.”

Held unconstitutional Southborough, Mass select board meeting rules that:

- required speakers to “act in a professional and courteous manner”
- required “[a]ll remarks and dialogue ... be respectful and courteous, free of rude, personal or slanderous remarks”
- declared that “[i]nappropriate language and/or shouting will not be tolerated”

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## Why Civility?

- In meetings civility/civil discourse thought to lead to more effective collaboration and decision-making
- For the cynics and/or self interested: useful tool for advocating for or challenging a point under consideration
  - Purpose of the deliberative session: discuss warrant articles, and discuss and vote upon proposed amendments
  - Comments presumably intended to educate and, if possible, persuade others of the wisdom or efficacy of speaker's position
  - I.e., intended to increase the likelihood that others will agree and vote with speaker
  - Civility aids that purpose, while lack of civility subverts it

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## Civil v. Uncivil

CIVIL	UNCIVIL
Treating opponents with the respect with which you wish yourself ( <b>or your mother</b> ) to be treated	Insulting, berating or otherwise being disrespectful to those who don't hold your position
Assuming that - and treating - a person holding an position different than yours as simply having different opinions as to the best course of action	Treating a person with a different opinion than yours as having improper motives
Addressing and challenging the opposing argument	Attacking the person making the opposing argument
Providing valid counterarguments and supporting your own with reason and objectively true information	Dismissing opposing viewpoints out of hand, spreading disinformation or merely trolling (provocative comments to incite emotional fracas rather than discussion of ideas)
Adhering to the meeting rules	Disrupting the meeting by interrupting, disrupting or otherwise ignoring the meeting rules

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## Out of Order Speakers & Disruptive Attendees

- **40:7 Debate.** – No person shall speak in any meeting
  - without leave of the moderator,
  - nor when any person speaking is in order;
  - and all persons shall be silent at the desire of the moderator,
  - on pain of forfeiting \$1 for each offense, for the use of the town.
  
- **40:8 Disorder.** – If any person shall behave in a disorderly manner, and,
  - after notice from the moderator, persist in such behavior, or
  - shall in any way disturb the meeting, or
  - willfully violate any rule of proceeding,

the moderator may command any constable or police officer, or any legal voter of the town, to remove such disorderly person from the meeting and detain such person until the business is finished.

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## Out of Order Speakers & Disruptive Attendees

- **40:9 Duty of Police.** – Every constable or police officer
  - shall obey the orders and commands of the moderator for the preservation of order,
  - and may command such assistance as is necessary;
  - and if any constable or police officer neglects to perform any of the duties imposed by this or RSA 39 such constable or police officer shall forfeit \$40 for the use of the town.
  
- **RSA 644:2** (NH Criminal Code) a person is guilty of disorderly conduct if:
  - III. He purposefully causes a breach of the peace, **public inconvenience, annoyance** or alarm, or recklessly creates a risk thereof, by:
    - (b) Disrupting **any lawful assembly or meeting** of persons without lawful authority.
  - VI. **Disorderly conduct is a misdemeanor if the offense continues after a request by any person to desist**; otherwise, it is a violation.

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## Out of Order Speakers & Disruptive Attendees

- *State v. Dominic*, 117 N.H. 573 (1977). Selectboard member can be criminally prosecuted for disorderly conduct after ignoring chair's rulings and continually interrupting meeting.
- In *State v. Comely*, 130 N.H. 688 (1988), upheld disorderly conduct conviction of protester who caused 90 second delay of opening of NH gubernatorial inauguration.
- *State v. Jeffrey Clay*, Case No. 2018-0184 (2019, N.H. S.Ct., unpublished order), affirmed convictions for disorderly conduct and resisting detention after repeated refusal to comply with select board's public comment rules.
- *Baer v. Leach*, (2015, U.S. Dist. Ct., Dist. N.H.). Police officer did not violate rights of individual arrested and charged with disorderly conduct after being warned three times to cease interrupting meeting. (Note the state court had dismissed the disorderly conduct charge.)

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## Out of Order Speakers & Disruptive Attendees

### PROCEED CAREFULLY

- Removal is on the surface antithetical to right of free speech, and the attend open meetings,
- Decision to remove a person from a meeting should be taken and carried out with due care.
- Disruptions must be actual, not constructive, technical or anticipatory (i.e., a perception comments could cause a disruption after the fact).
- Meet with officer or Chief before the meeting;
  - Discuss meeting rules;
  - Discuss cues and steps before invoking removal power.

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## Out of Order Speakers & Disruptive Attendees

➤ Steps to take before removal:

- Provide paper copies of meeting rules;
- Summarize the rules at the start of the meeting;
- Apply the rules equally, with only minor variance;
- **Strike 1:** Provide clear warnings and instructions (not mere polite requests) before taking formal action;
- **Strike 2:** If disruption persists, call a recess and try to talk with the person – preferably with officer assistance;
- **Strike 3:** Provide at least one last chance after alerting officer;
- **Clearly** order the person to leave and ask officer’s assistance to effect that order. Officer must see the disruption, preferably after strike 2 recess.



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